

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

BRYSON J. COOPER,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-24  
IR2012-25

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Bryson J. Cooper, Respondent.

1. At all times pertinent to these matters, Respondent was employed by Craft Air Services, 865 Swamp Road, Hertford, North Carolina. Respondent had held Aerial Applicator (Pilot) License No. 803, but this license had lapsed on January 1, 2012.

IR2012-24

2. On March 30, 2012 Complainant's inspectors investigated a complaint by David E. DeWald, 1679 New Hope Road, Perquimans County, Hertford, North Carolina.

3. Complainant's inspectors met with Mr. DeWald at his residence. Mr. DeWald stated that on March 30, 2012 he observed a yellow airplane spraying an adjacent field farmed by Robert H. Eure, Jr., and saw the spray drift onto his pasture. Mr. DeWald said he and his wife could smell a pesticide.

4. Complainant's inspector then contacted Mr. Eure. Mr. Eure stated that he contracted with Craft Air Services to aerially apply Karate (lambda-cyhalothrin), EPA Reg. No. 100-1097, a synthetic pyrethroid insecticide, Class II, Warning, and Quilt Xcel (azoxystrobin and propiconazole), EPA Reg. No. 100-1324, a strobilurin/triazole fungicide, Class II, Warning, to his wheat field.

5. On April 4, 2012 Complainant's inspector met with the Respondent, the aerial applicator. The Respondent stated that on March 30, 2012 he aerially applied Karate and Quilt Xcel to Mr. Eure's wheat field adjacent to Mr. DeWald's pasture.

6. Complainant's inspector determined that at the time of the application, the Respondent was not licensed as an aerial applicator in North Carolina. The Respondent renewed his Aerial Applicator (Pilot) License No. 803 during the inspection.

7. Complainant's inspector collected samples including the following:

- PW-04 vegetation, Robert and Shaun Gajowski's property, 137 Godfrey Lane, (adjacent to Mr. Eure's wheat field), 71 feet from residence
- PW-05 vegetation, Godfrey Lane right-of-way (west)
- PW-06 vegetation, Godfrey Lane right-of-way (east)
- PW-07 vegetation, target

8. Laboratory analysis of these samples revealed the presence of azoxystrobin, propiconazole and lambda-cyhalothrin.

9. During the investigation, Complainant's inspector determined that the Respondent allowed pesticides to drift and/or be deposited within 25 feet of Godfrey Lane and within 100 feet of Robert and Shaun Gajowski's residence.

10. The registered label for Karate contains the following label language:

Do not apply when weather conditions favor drift from treated areas.  
Only apply this product if the wind direction favors on-target deposition.

The registered label for Quilt Xcel contains the following label language:

DO NOT spray when conditions favor drift beyond area intended for application.  
AVOIDING SPRAY DRIFT IS THE RESPONSIBILITY OF THE  
APPLICATOR.

#### IR2012-25

11. On March 30, 2012 Complainant's inspectors investigated a complaint by Bobby C. Wiese, 223 Gibson Road, Hertford, Perquimans County, North Carolina.

12. Complainant's inspectors met with Mr. Wiese at his residence. Mr. Wiese stated that on March 30, 2012 he observed a yellow airplane spraying an adjacent field farmed by Robert H. Eure, Jr., and saw the spray drift onto his property.

13. Complainant's inspector then contacted Mr. Eure. Mr. Eure stated that he contracted with Craft Air Services to aerially apply Karate (lambda-cyhalothrin), EPA Reg. No. 100-1097, a synthetic pyrethroid insecticide, Class II, Warning, and Quilt Xcel (azoxystrobin and



propiconazole), EPA Reg. No. 100-1324, a strobilurin/triazole fungicide, Class II, Warning, to his wheat field.

14. On April 4, 2012 Complainant's inspector met with the Respondent, the aerial applicator. The Respondent stated that on March 30, 2012 he aerially applied Karate and Quilt Xcel to Mr. Eure's wheat field adjacent to Mr. Wiese's property.

15. Complainant's inspector determined that at the time of the application, the Respondent was not licensed as an aerial applicator in North Carolina. The Respondent renewed his Aerial Applicator (Pilot) License No. 803 during the inspection.

16. Complainant's inspector collected samples including the following:

PW-08 vegetation, Bobby C. Wiese's property, 55 feet from residence

PW-09 vegetation, Gibson Road right-of-way (south)

PW-10 vegetation, Gibson Road right-of-way (north)

PW-11 vegetation, target

17. Laboratory analysis of samples PW-08, PW-10 and PW-11 revealed the presence of azoxystrobin, propiconazole and lambda-cyhalothrin.

Laboratory analysis of sample PW-09 revealed the presence of azoxystrobin.

18. During the investigation, Complainant's inspector determined that the Respondent allowed pesticides to drift and/or be deposited within 25 feet of Gibson Road and within 100 feet of Bobby C. Wiese's residence.

19. The registered label for Karate contains the following label language:

Do not apply when weather conditions favor drift from treated areas.

Only apply this product if the wind direction favors on-target deposition.

The registered label for Quilt Xcel contains the following label language:

DO NOT spray when conditions favor drift beyond area intended for application.

AVOIDING SPRAY DRIFT IS THE RESPONSIBILITY OF THE APPLICATOR.

20. As a result of its investigations, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-452(a)---

- (a) No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

N.C. Gen. Stat. § 143-456(a)(2), (5) and (15)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

02 N.C. Admin. Code 9L .1005(c) and (e)---

- (c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance;
- (e) No pesticide shall be deposited within 100 feet of any residence.

21. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

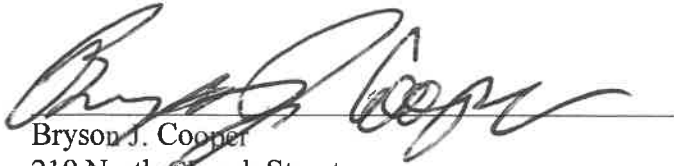
22. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of two thousand four hundred dollars (\$2,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of two thousand four hundred dollars (\$2,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of two thousand four hundred dollars (\$2,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 22(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 22(d) of this Agreement.

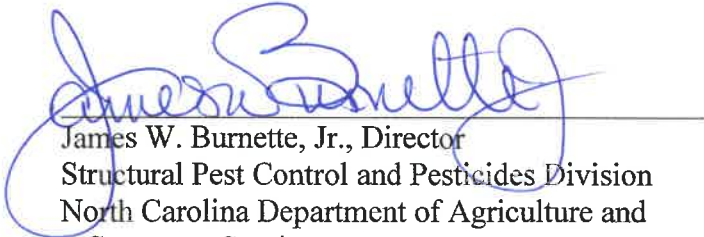
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Bryson J. Cooper  
219 North Church Street  
Apartment B  
Hertford, NC 27944

Dec 11, 2013  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

12/18/2013  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

12/18/2013  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of January, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



IR2012-024

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

BRYSON J. COOPER.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Bryson J. Cooper, Respondent

Patrick N. Farquhar, Eastern Field Manager

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

BRYSON J. COOPER.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Bryson J. Cooper, Respondent

Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-60

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

FREDDIE L. SPENCER,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Freddie L. Spencer, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 68688.
2. On June 21, 2012 Complainant's inspector investigated a complaint by Marvin Brickhouse, 7964 Highway 94 North, Creswell, Washington County, North Carolina, regarding damage to a cherry tree and azalea bush on his property from a pesticide application to an adjacent field farmed by the Respondent.
3. Complainant's inspector met with Mr. Brickhouse at his residence and observed damage to his cherry tree and azalea bush.
4. Complainant's inspector then met with the Respondent at his farm shop. The Respondent stated that he applied Acephate 97 (acephate), EPA Reg. No. 70506-8-55467, an insecticide, Class III, Caution; Liberty (glufosinate-ammonium), EPA Reg. No. 264-829, a herbicide, Class II, Warning; and Staple LX (pyrithiobac sodium), EPA Reg. No. 352-613, a herbicide, Class III, Caution, to his cotton field adjacent to Mr. Brickhouse's property the previous week.
5. Complainant's inspector collected the following samples:
  - CH-17 vegetation, Marvin Brickhouse's cherry tree
  - CH-18 vegetation, Marvin Brickhouse's azalea bush
  - CH-19 vegetation, target

CH-20 soil, target

6. Laboratory analysis of these samples revealed the presence of acephate, methamidiphos and glufosinate-ammonium.

7. The registered label for Liberty contains the following language:

Do not apply under circumstances where possible drift to unprotected persons or to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use or consumption can occur.

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:



N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of six hundred fifty dollars (\$650.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred fifty dollars (\$650.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred fifty dollars (\$650.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.

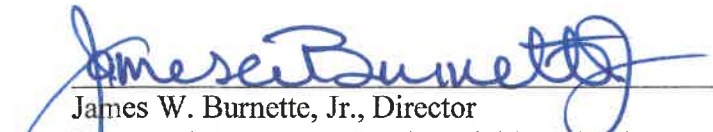
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Freddie L. Spencer  
300 Old Beach House Road  
Columbia, NC 27925

12-13-13  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

1-6-2014  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

12/20/2013  
Date

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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of January, 2014

NORTH CAROLINA PESTICIDE BOARD

BY:  Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Freddie L. Spencer

**Respondent,**

Supplemental Information

Settlement conference was held with Freddie Spencer by Dwight Seal, Western District  
Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-81

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

ROGER L. GROCE,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Roger L. Groce, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 36216.
2. On August 23, 2012 Complainant's inspector investigated an anonymous complaint regarding workers working in fields while pesticides were being sprayed and workers eating lunch in recently sprayed fields at the Respondent's farm in Hamptonville, Yadkin County, North Carolina.
3. Complainant's inspector and bilingual specialist met with the Respondent at his farm located at 4600 Collins Road in Hamptonville, North Carolina, and conducted a Worker Protection Standard inspection.
4. Complainant's inspector determined the Respondent failed to post specific information regarding his pesticide applications of Fair Plus (maleic hydrazide), EPA Reg. No. 51873-2, a tobacco growth regulator, Class III, Caution, and Flupro (flumatralin), EPA Reg. No. 73631-2-400, a tobacco growth regulator, Class II, Warning, to his tobacco in July and August 2012.
5. Complainant's bilingual specialist interviewed three H-2A workers. The three workers stated that they were not in fields during pesticide applications. They said that they eat lunch in the shade at the edge of fields that had not been sprayed.

6. The registered labels for Fair Plus and Flupro contain the following language:

**AGRICULTURAL USE REQUIREMENTS**

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170.

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1805---

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."

§ 170.122 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the location specified for the pesticide safety poster in § 170.135(d) and shall be accessible and legible, as specified in § 170.135(e) and (f).

(b) Timing.

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

02 N.C. Admin. Code 9L .1807---

(a) Concerning application information requirements contained in Sections 170.122 and 170.222 the following is also required to be completed by the agricultural employer:

(1) In addition to the requirements of Sections 170.122(c)(3), and 170.222(c)(3), the specific time of day when each pesticide application was completed must be recorded immediately upon completion of the application. Each day of the application shall be recorded as a separate record.

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of seven hundred dollars (\$700.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of seven hundred dollars (\$700.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of seven hundred dollars (\$700.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT: IR2012-81

Roger L. Groce

Roger L. Groce  
4600 Collins Road  
Hamptonville, NC 27020

12-23-13  
Date

James W. Burnette, Jr.

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

1-14-2014  
Date

Barry H. Bloch

Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

12/27/2013  
Date

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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of January, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:

Russell  
Chairman





NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Roger L. Groce

**Respondent,**

Supplemental Information

Settlement conference was held with Roger Groce by Dwight Seal, Western District Manager.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-039D

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

BRULIN & COMPANY, INC.,

Respondent.

SETTLEMENT AGREEMENT

COUNTY OF DAVIDSON

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Brulin & Company, Inc., Respondent.

1. At all times pertinent to this matter, Respondent registered the product Maxima 256 Germicidal Detergent, EPA Reg. No. 106-73, with Complainant.
2. On March 5, 2012 the Pesticide Section obtained and tested the following sample of Maxima 256 Germicidal Detergent:

Batch No.	Lab. No.	Sample Date	Results	Date of Statewide Stop-Sale Order
MD390-4	12D07	03/05/2012	Ineffective against <i>S. aureus</i>	05/04/2012

3. Laboratory analysis revealed batch number MD390-4 of Maxima 256 Germicidal Detergent was adulterated in that it was ineffective against *S. aureus*.
4. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(a)(5)---

(a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce

or between points within this State through any point outside this State any of the following:

- (5) Any pesticide which is adulterated or misbranded, (or any device which is misbranded).

5. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

6. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of six hundred dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if Respondent fails to pay the total agreed upon sum of six hundred dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 6(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 6(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Bernard L. Johnson

Brulin & Company, Inc.  
P.O. Box 270  
Indianapolis, IN 46206

31 Oct 2013  
Date

James W. Burnette, Jr.

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

11-18-2013  
Date

Barry H. Bloch

Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

11/15/2013  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of January

NORTH CAROLINA PESTICIDE BOARD

BY:

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Berma L. Johnson

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

CHARLES D. TAYLOR,

ORDER LIFTING STAY AND  
IMPOSING REVOCATION OF  
AERIAL APPLICATOR'S LICENSE

---

TO: Charles D. Taylor  
2050 Summer Road  
Dillon, SC 29536

This matter coming on to be heard before the North Carolina Pesticide Board on January 13, 2015, at its regularly scheduled meeting, on the North Carolina Pesticide Section's *ex parte* Motion for an Order lifting a stay and imposing revocation of Charles D. Taylor's aerial applicator's license, supported by the Section's report as to his failure to make the scheduled payments in accordance with the Settlement Agreement, as follows;

1. At all times pertinent to this matter Charles D. Taylor (hereinafter, "Mr. Taylor") held North Carolina aerial applicator (pilot) license number 644.
2. On January 14, 2014, the Board approved a Settlement Agreement (File Nos.: IR2001-71, IR2003-45, IR2003-67, IR2006-81, IR2006-111 and IR2013-49) between Mr. Taylor and the Complainant, resolving Notices of Violation issued by the Pesticide Section against Mr. Taylor for violation(s) of the North Carolina Pesticide Laws of 1971.
3. Under the Settlement Agreement which is attached hereto and incorporated by reference, the Pesticide Board revoked Mr. Taylor's aerial applicator license with Mr. Taylor's consent and stayed imposition of that action conditioned upon, among other things, Mr. Taylor's promise to pay the sum of fourteen thousand six hundred dollars (\$14,600.00) to the North Carolina Department of Agriculture and Consumer Services in accordance with a payment schedule set forth in said Settlement Agreement.
4. On January 21, 2014, Mr. Taylor received notice that the Pesticide Board had approved said Settlement Agreement.

5. Since January 21, 2014, Mr. Taylor has made three payments of two hundred dollars (\$200.00), in March 2014, in April 2014 and January 2015. Respondent has failed to pay all other payments that are currently due, for an arrearage of \$2,600.00 as of the date of this Order.

6. Failure to pay the sums agreed to in accordance with the payment schedule in a Settlement Agreement approved by the Board is a material violation of the Settlement Agreement and grounds for action against a license pursuant to N.C. Gen Stat. § 143-456(a)(5):

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board; ....

7. Mr. Taylor expressly consented to the Board's revocation of his aerial applicator's license and has full notice that, if he fails to fully comply with his obligations under the Settlement Agreement, the Board may dissolve the stay and impose the revocation of his aerial applicator's license:

28.(e) That Respondent acknowledges that if Respondent fails

i) to pay the total agreed upon sum of fourteen thousand six hundred dollars (\$14,600.00) as set forth according to the terms of paragraph 28(a) of this Agreement; ...

The Board may take any or all of the following actions against the Respondent for violation of the terms of this Settlement Agreement:

(1) lifting the stay of the revocation of Respondent's aerial applicator's license; ...

8. The Board's counsel notified Mr. Taylor by letter dated January 2, 2015, that the N.C. Pesticide Section intended to report his arrearage of payments and violation of the Settlement Agreement to the Board at its regularly scheduled meeting on January 13, 2015, and that the Board could, during that meeting, impose revocation or suspension of Mr. Taylor's license.

9. Mr. Taylor replied to said letter by letter and e-mail, acknowledging he had been informed of the Pesticide Section's intentions to seek lifting the stay and imposition of the revocation or suspension of his license.

Based upon the foregoing, THE BOARD HEREBY ORDERS that stay of the revocation of Mr. Taylor's aerial applicator's license no. 644 is dissolved. Said revocation is effective upon date set forth below above the Chair's signature.

Respondent's Rights

10. You may appeal the Board's decision by filing a petition with the Superior Court of Wake County pursuant to N.C. Gen. Stat. § 150B-45, which is attached hereto and incorporated herein by reference.

This Order is issued the 16<sup>th</sup> day of January 2015.

NORTH CAROLINA PESTICIDE BOARD

By: \_\_\_\_\_

Ricky L. Langley, M.D.  
Chairman





### CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order was served upon the following persons by mailing a copy, by

☐ U.S. Mail, Certified Mail, Return Receipt requested, postage prepaid;

☐ Federal Express (FEDEX);

☐ United Parcel Service

☐ Other: \_\_\_\_\_

addressed as follows:

Charles D. Taylor  
2050 Summer Road  
Dillon, SC 29536

This the \_\_\_\_\_ day of January 2015.

\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

**§ 150B-45. Procedure for seeking review; waiver.**

(a) Procedure. - To obtain judicial review of a final decision under this Article, the person seeking review must file a petition within 30 days after the person is served with a written copy of the decision. The petition must be filed as follows:

(1) Contested tax cases. - A petition for review of a final decision in a contested tax case arising under G.S. 105-241.15 must be filed in the Superior Court of Wake County.

(2) Other final decisions. - A petition for review of any other final decision under this Article must be filed in the superior court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed.

(b) Waiver. - A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition.

(1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 16; 2007-491, s. 43; 2013-143, s. 4.)

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2011-85

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

WILLIAM J. HOWE & AURORA HILLS  
FARM AND NURSERY, INC.

Respondents.

SETTLEMENT AGREEMENT

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and William J. Howe & Aurora Hills Farm and Nursery, Respondents.

1. At all times pertinent to this matter, Respondent William J. Howe (hereinafter, "Respondent Howe") was the president of Aurora Hills Farm and Nursery, Inc., 986 South Currant Street, Pinebluff, Moore County, North Carolina and Aurora Hills Farm and Nursery, Inc., is a corporation incorporated and existing under the laws of the State of North Carolina.
2. During an online search for landscape contractors in the Moore County, North Carolina, area, Complainant's inspector found an advertisement for landscape services by Aurora Hills Farm and Nursery, Inc.
3. The advertisement listed two licensed applicators: Respondent Howe, Ground Applicator License No. 21671 and Thomas J. Howe, Jr., Ground Applicator License No. 5094.
4. Complainant's inspector searched the Pesticide Section's records and determined that Respondent Howe's license expired on December 31, 2008 and Thomas J. Howe, Jr.'s license expired on December 31, 2009.
5. On October 13, 2011 Complainant's inspector went to Aurora Hills Farm and Nursery to conduct an inspection. Webb Howe, Respondent Howe's son, refused Complainant's inspector access to Aurora Hills Farm and Nursery's pesticide storage area.

6. On October 14, 2011 Complaint's inspector determined Aurora Hills Farm and Nursery purchased pesticides from Cardinal Chemicals, Inc., in Aberdeen, North Carolina.

7. On October 18, 2011 Complainant's inspector met with Fred K. Seebeck, Jr., at Cardinal Chemicals. Mr. Seebeck, the licensed pesticide dealer, provided sales records that showed Aurora Hills Farm and Nursery purchased the following restricted use pesticides:

- Bifenthrin Golf & Nursery 7.9F (bifenthrin), EPA Reg. No. 66222-192, a synthetic pyrethroid, Class III, Caution on July 20, 2010; and
- Menace GC 7.9% (bifenthrin), EPA Reg. No. 228-458, a synthetic pyrethroid, Class III, Caution, on May 9, 2011.

8. Complainant's inspector then met with Respondent Howe at Aurora Hills Farm and Nursery. Respondent Howe provided pesticide application records that showed the application of Menace GC 7.9% on May 15, 2011 and Bifenthrin Golf & Nursery 7.9F on July 25, 2011 to his nursery plants and shrubs.

9. The registered labels for Menace GC 7.9%, and Bifenthrin Golf & Nursery 7.9F contain the following language:

**RESTRICTED USE PESTICIDE**

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification.

10. As a result of its investigation, Complainant alleges that Respondents, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4), (5) and (15)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

N.C. Gen. Stat. § 143-466(e)(3)---

(e) For the purpose of carrying out the provisions of this Article, inspectors designated by the Board may enter upon any public or private premises at reasonable times, in order:

- (3) To inspect storage or disposal areas.

No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

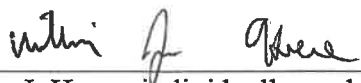
12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent Howe agrees to pay the sum of six hundred dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services in six (6) equal installments at 30-day intervals. The first payment of one hundred dollars (\$100.00) shall be due and payable on the thirtieth day after the Board's approval of this Agreement;
- (b) That Respondent Howe denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;


- (c) That Respondent Howe acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent Howe agrees that if he fails to pay the total agreed upon sum of six hundred dollars (\$600.00) as outlined in paragraph 12(a) of this Agreement, this Agreement will constitute a civil penalty assessment of the North Carolina Pesticide Board of six hundred dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent Howe acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(d) and waives said right by consenting to the terms of this Agreement. Respondent Howe further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
William J. Howe, individually, and as President  
of Aurora Hills Farm and Nursery  
Aurora Hills Farm and Nursery, Inc.  
986 South Currant Street  
Pinebluff, NC 28373

11-8-13  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

11-18-2013  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

14 Nov 2013  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of January, 2013. <sup>14 R2</sup>

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

William J. Howe

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

William J. Howe, Respondent  
Dwight E. Seal, Western Field Manager



COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-36

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

**Complainant,**

v.

C. B. HARDMAN,

**Respondent.**

## SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and C. B. Hardman, Respondent.

1. At all times pertinent to this matter, Respondent was the owner of Hardman's Landscaping, Winterville, North Carolina.
2. On April 27, 2012 Complainant's inspector observed Julian Nunez, an employee of Hardman's Landscaping, making a pesticide application at 3507 Cantata Drive in Greenville, Pitt County, North Carolina.
3. Complainant's inspector contacted Mr. Nunez's employer, the Respondent, and determined that no one associated with Hardman's Landscaping was licensed to apply pesticides.
4. Complainant's inspector then met with the Respondent. The Respondent stated that in 2000-2001 he obtained the study materials for the pesticide exam; but did not take the pesticide exam.
5. The Respondent said that on April 27, 2012 Mr. Nunez applied Gly-Star Plus (glyphosate), EPA Reg. No. 42750-61, a non-selective herbicide, Class III, Caution, at 3507 Cantata Drive in Greenville, North Carolina.
6. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-452(a)---

(a) No person shall engage in the business of pesticide applicator within the State at any time unless he is licensed annually as a pesticide applicator by the Board.

N.C. Gen. Stat. § 143-456(a)(5) and (15)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

02 N.C. Admin. Code 9L .0503(a)---

(a) The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.

7. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

8. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of eight hundred dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services in eight (8) equal installments at 30-day intervals. The first payment of one hundred dollars (\$100.00) shall be due and payable on the thirtieth day after the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;

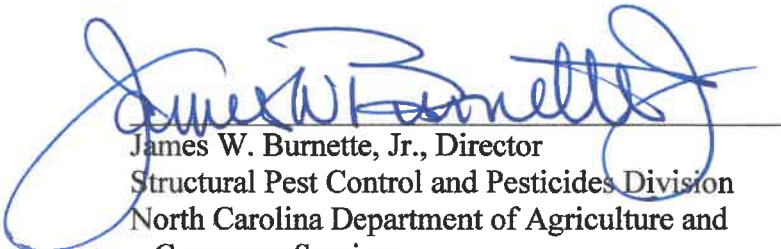
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of eight hundred dollars (\$800.00) as outlined in paragraph 8(a) of this Agreement, this Agreement will constitute a civil penalty assessment of the North Carolina Pesticide Board of eight hundred dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 8(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 8(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
C. B. Hardman  
Hardman's Landscaping  
2201 Winder Court  
Winterville, NC 28590

2-24-14  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

2/24/2014  
Date

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

2/26/2014  
Date

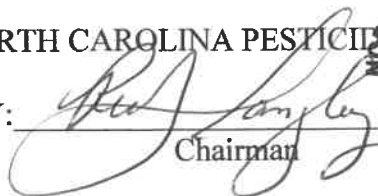
\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 11<sup>th</sup> day of March

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

C. B. HARDMAN.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

C. B. Hardman, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-40

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

LAWRENCE OVERSTREET, JR.,

Respondent.

SETTLEMENT AGREEMENT

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Lawrence Overstreet, Jr., Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 48307.
2. On May 4, 2012 Complainant's inspector investigated a complaint by Franklin McLean regarding damage to a wheat field from a pesticide application to an adjacent field. Mr. McLean reported that the wheat field is owned by his employer, Keith L. Adcox.
3. Complainant's inspector met with Mr. Adcox and Mr. McLean at the wheat field located at Howell Road and Cannan Drive in Lumberton, Robeson County, North Carolina, and observed damage to the wheat plants. Mr. Adcox stated that a burndown treatment was applied to the adjacent field before planting corn. He said that the Respondent planted the corn and was responsible for the burndown treatment.
4. Complainant's inspector then met with the Respondent at his farm located at 12482 NC Highway 41 North, Lumberton, North Carolina. The Respondent stated that his son, under his supervision, applied a mixture of Loveland Products Atrazine 4L (atrazine), EPA Reg. No. 34704-69, a triazine herbicide, Class III, Caution; and Roundup PowerMax (glyphosate), EPA Reg. No. 524-549, a non-selective herbicide, Class II, Warning, as a burndown treatment to the field adjacent to Mr. Adcox's wheat field. This application was made the first week of April 2012.
5. Complainant's inspector collected the following samples:

JM-37 vegetation, Keith L. Adcox's wheat field  
JM-38 vegetation, target

6. Laboratory analysis of sample JM-37 revealed the presence of glyphosate and atrazine.

Laboratory analysis of sample JM-38 revealed the presence of glyphosate, AMPA and atrazine.

7. The registered label for Loveland Products Atrazine 4L contains the following language:

Do not apply when weather conditions favor drift from treated areas.

The registered label for Roundup PowerMax contains the following language:

AVOID CONTACT OF HERBICIDE WITH FOLIAGE, GREEN STEMS . . .  
OF DESIRABLE PLANTS AND TREES, AS SEVERE INJURY OR  
DESTRUCTION MAY RESULT.

AVOID CONTACT OF THIS HERBICIDE WITH DESIRABLE  
VEGETATION.

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.


10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of six hundred dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(d) of this Agreement.

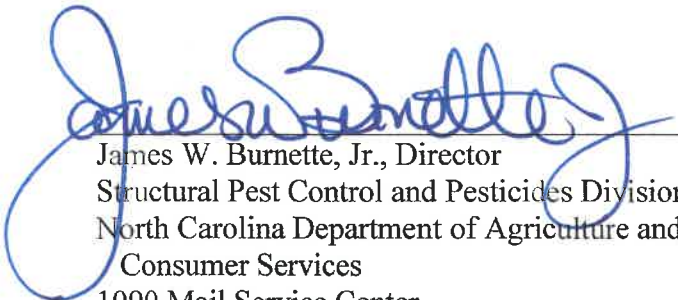


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Lawrence Overstreet, Jr.  
12482 NC Highway 41 North  
Lumberton, NC 28358

1-20-14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

January 31, 2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

1/27/2014  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 11<sup>th</sup> day of March, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Lawrence Overstreet, Jr.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Lawrence Overstreet, Jr., Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-46

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JAMES M. ROYAL,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and James M. Royal, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 81791.
2. On May 14, 2012 Complainant's inspector investigated a complaint by Tracy E. Horne, Twisted Vineyard, 2838 H.B. Lewis Road in Clinton, Sampson County, North Carolina, regarding damage to his grapes from a pesticide application to an adjacent barley field.
3. Complainant's inspector met with Mr. Horne at his vineyard and observed damage on the grape vegetation. Mr. Horne stated that he observed the symptoms a few days after the Respondent sprayed the barley field adjacent to the vineyard.
4. Complainant's inspector then met with the Respondent. The Respondent stated that he applied the following pesticides to his barley field:
  - Roundup PowerMax (glyphosate), EPA Reg. No. 524-549, a non-selective herbicide, Class II, Warning, on April 8, 2012 and May 7, 2012
  - PendiPro 3.3 EC (pendimethalin), EPA Reg. No. 241-337-71058, a dinitroaniline herbicide, Class III, Caution, on May 9, 2012
  - Valor (flumioxazin), EPA Reg. No. 59639-99, an N-phenylphthalimide preemergence herbicide, Class III, Caution, on May 9, 2012

5. Complainant's inspector collected the following samples:

BC-35 soil, target  
BC-36 vegetation, target  
BC-37 vegetation, Tracy E. Horne's vineyard

6. Laboratory analysis of sample BC-35 revealed the presence of AMPA, pendimethalin and flumioxazin.

Laboratory analysis of sample BC-36 revealed the presence of glyphosate, pendimethalin and flumioxazin.

Laboratory analysis of sample BC-37 revealed the presence of pendimethalin and the presence of flumioxazin below the quantifiable limit.

7. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed the photographs in the case file, and Dr. Wade concluded to a reasonable degree of scientific certainty that the damage on the grapes was caused by the drift of flumioxazin.

8. The registered label for PendiPro 3.3 EC contains the following language:

**DO NOT** allow spray to drift from the application site and contact people, structures people occupy at any time and the associated property, parks and recreation areas, nontarget crops, aquatic and wetland areas, woodlands, pastures, rangelands, or animals.

The registered label for Valor contains the following language:

Do not apply when weather conditions favor drift from treated areas.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of six hundred fifty dollars (\$650.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred fifty dollars (\$650.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the

Board of six hundred fifty dollars (\$650.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(d) of this Agreement.

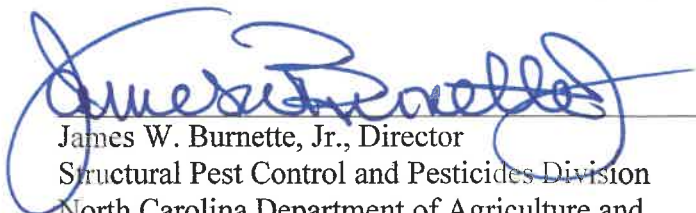
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



James M. Royal  
13295 Hobbton Highway  
Newton Grove, NC 28366

2-1-14  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

2/17/2014  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

2/7/2014  
Date

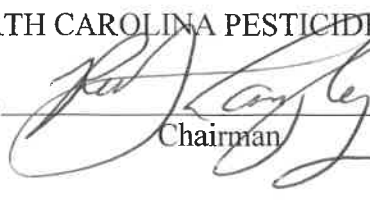
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APPROVED AND ORDERED FILED,

this the 11<sup>th</sup> day of March, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

James M. Royal,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Mr. Billy Sutton, Attorney, representing Mr. James Royal, Respondent  
Patrick N. Farquhar, Eastern Field Manager



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-55

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

RICKY E. JOYNER,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Ricky E. Joyner, Respondent.

1. At all times pertinent to this matter, Respondent held Ground Applicator License No. 28428.
2. On June 11, 2012 Complainant's inspector investigated a complaint by Gary B. Johnson, 2494 Old School Road, Four Oaks, Johnston County, North Carolina, regarding damage to his corn from a pesticide application to an adjacent field. Mr. Johnson reported that the Respondent was responsible for the pesticide application to the adjacent field.
3. Complainant's inspector met with Mr. Johnson at his corn field and observed brown spotting on the leaves. Complainant's inspector also observed a damaged cherry tree on Mr. Johnson's property. Mr. Johnson stated that he noticed the damage after the pesticide application to the adjacent field.
4. Complainant's inspector also met with the Respondent at the corn field. The Respondent stated that on June 6, 2012 his son, under his supervision, applied Gramoxone SL 2.0 (paraquat), EPA Reg. No. 100-1431, a nonselective contact herbicide/desiccant, Class I, Danger-Poison as a burndown treatment before planting peanuts to the field adjacent to Mr. Johnson's corn field.
5. On June 9, 2012 the Respondent's son applied a metolachlor product and Valor (flumioxazin), EPA Reg. No. 59639-99 an N-phenylphthalimide preemergence herbicide, Class III, Caution, to the peanut field.

6. Complainant's inspector collected the following samples:

BD-42 vegetation, Gary B. Johnson's corn  
BC-43 vegetation, Gary B. Johnson's cherry tree  
BD-44 vegetation, target

7. Laboratory analysis of sample BD-42 revealed the presence of paraquat and flumioxazin.

Laboratory analysis of samples BD-43 and BD-44 revealed the presence of paraquat, metolachlor and flumioxazin.

8. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed photographs of the corn and cherry tree in the case file, and Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to the corn and cherry tree was caused by the paraquat that was sprayed in an adjacent field on June 6, 2012.

9. The registered label for Gramoxone SL 2.0 contains the following language:

Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas.

The registered label for Valor contains the following language:

Do not apply when weather conditions favor drift from treated areas.

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;  
(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---


(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

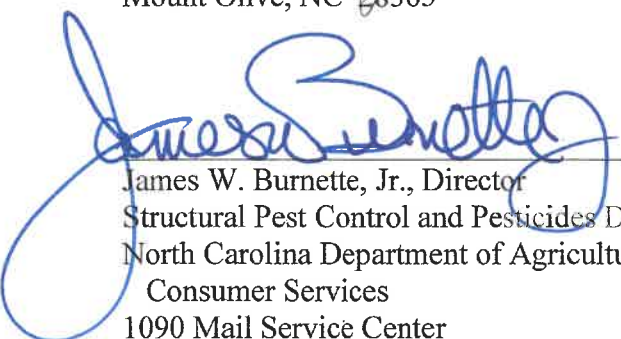
- (a) That Respondent agrees to pay the sum of six hundred fifty dollars (\$650.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred fifty dollars (\$650.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred fifty dollars (\$650.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Ricky E. Joyner  
275 Manly Grove Church Road  
Mount Olive, NC 28365

1-23-14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

January 31, 2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

1/27/2014  
\_\_\_\_\_  
Date

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APPROVED AND ORDERED FILED,

this the 11<sup>th</sup> day of March, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Ricky E. Joyner,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Ricky E. Joyner, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-59

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

LEMUEL C. RICKS,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Lemuel C. Ricks, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 55158.
2. On June 20, 2012 Complainant's inspector investigated a complaint by Larry B. Moses, Jackson, Northampton County, North Carolina, regarding damage to two of his corn fields from pesticide applications to adjacent fields. Mr. Moses reported that the Respondent was responsible for the pesticide applications to the adjacent fields.
3. Complainant's inspector met with Mr. Moses and observed the damage to his corn fields adjacent to W J Duke Service Road in Jackson, North Carolina. Mr. Moses stated that on June 19, 2012 the Respondent contacted his son and informed him of the damage to the corn fields.
4. Complainant's inspector then met with the Respondent. The Respondent stated that Brandon Martin, under his supervision, applied Gramoxone SL 2.0 (paraquat), EPA Reg. No. 100-1431, a nonselective contact herbicide/desiccant, Class I, Danger-Poison; and Prefix Herbicide (s-metolachlor and fomesafen), EPA Reg. 100-1268, a preemergent herbicide, Class II, Warning, as a burndown treatment before planting soybeans to the fields adjacent to Mr. Moses' corn fields.
5. Complainant's inspector collected the following samples:  
  
PS-12 vegetation, Larry B. Moses' corn field

PS-13 soil, Larry B. Moses' corn field  
PS-14 soil, target

6. Laboratory analysis of sample PS-12 revealed the presence of paraquat.

Laboratory analysis of sample PS-13 revealed the presence of fomesafen.

Laboratory analysis of sample PS-14 revealed the presence of fomesafen and paraquat.

7. The registered label for Gramoxone SL 2.0 contains the following language:

Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas.

The registered label for Prefix Herbicide contains the following language:

Do not apply when weather conditions favor drift from target area.

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of five hundred fifty dollars (\$550.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of five hundred fifty dollars (\$550.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of five hundred fifty dollars (\$550.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(d) of this Agreement.



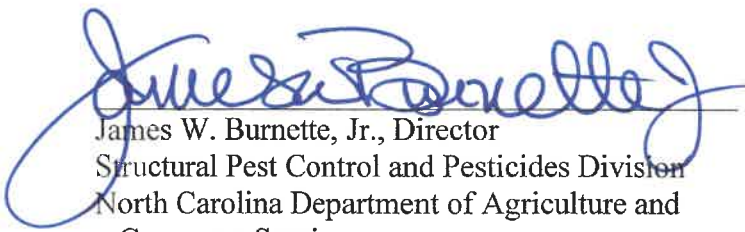
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Lemuel C. Ricks  
607 NCHS East Road  
Conway, NC 27820

2-16-14  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

2/26/2014  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

2/27/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 11<sup>th</sup> day of March, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Lemuel C. Ricks,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Ms. Marlo Williams, Attorney, representing Mr. Lemuel C. Ricks, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-70

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

LYMAN H. HARRELL,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Lyman H. Harrell, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 82048.
2. On July 30, 2012 Complainant's inspector investigated a complaint by Lonnie W. Farless regarding damage to his tobacco field on Mount Gould River Road in Merry Hill, Bertie County, North Carolina.
3. Mr. Farless reported that drift from an application of Gramoxone SL 2.0 (paraquat), EPA Reg. No. 100-1431, a nonselective contact herbicide/desiccant, Class I, Danger-Poison, to an adjacent sage field damaged his tobacco. Mr. Farless reported that the pesticide application was made by the Respondent.
4. Complainant's inspector met with Mr. Farless at his tobacco field and observed spots on the tobacco leaves. Complainant's inspector noted that the symptoms were more severe closest to the sage field.
5. On July 31, 2012 Complainant's inspector met with the Respondent. The Respondent stated that on July 19, 2012 he applied Gramoxone SL 2.0 to his sage field adjacent to Mr. Farless' tobacco field.
6. Complainant's inspector collected the following samples:

CH-22 vegetation, target  
CH-23 vegetation, Lonnie W. Farless' tobacco  
CH-24 soil, target

7. Laboratory analysis of these samples revealed the presence of paraquat.

8.. The registered label for Gramoxone SL 2.0 contains the following language:

Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

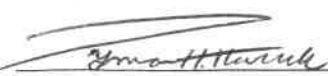
(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

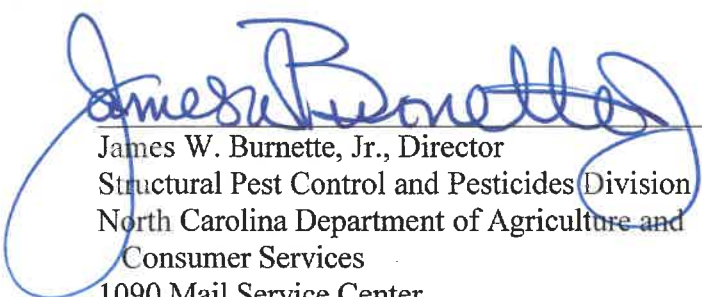
- (a) That Respondent agrees to pay the sum of six hundred dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Lyman H. Harrell  
106 Brant Court  
Windsor, NC 27983

1-12-14  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

January 31, 2014  
Date

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

1/17/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 11<sup>th</sup> day of March, 2014

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Lyman H. Harrell.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Lyman H. Harrell, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-82

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

WILLIAM DAVY HOBSON,

Respondent.

SETTLEMENT AGREEMENT

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and William Davy Hobson, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 891.
2. On August 24, 2012 Complainant's inspectors investigated an anonymous complaint regarding workers working in fields while pesticides were being sprayed at the Respondent's farm in Yadkinville, Yadkin County, North Carolina.
3. Complainant's inspectors met with the Respondent at his farm located at 1940 Union Grove Church Road in Yadkinville, North Carolina, and conducted a Worker Protection Standard inspection.
4. The Respondent stated that his employees had applied Check Maleic Hydrazide 15 (maleic hydrazide), EPA Reg. No. 5549-89, a tobacco growth regulator, Class III, Caution; Fair 85 (maleic hydrazide), EPA Reg. No. 51873-7, a tobacco growth regulator, Class II, Warning; and Prime+ EC (flumatralin), EPA Reg. No. 100-640, a tobacco growth regulator, Class I, Danger.
5. The Respondent said that he has applied pesticides in fields while workers were topping tobacco, but was never close to the workers. The workers were at least 32 rows away.
6. There were no decontamination supplies in the fields.
7. Complainant's inspector interviewed the following H-2A workers:



- Esequiel Tovar Gallegos stated that spraying occurred in a field while he was topping tobacco, but the sprayer was far away from him. He said personal protective equipment was not provided according to labeling.
  - Jeronimo Mendoza Medina stated that he never saw anyone spraying in the fields where he was working. He said personal protective equipment was not provided according to labeling.
  - Miguel Angel Ramirez stated that one time he was working in a field while pesticides were being sprayed, but there were many rows between them. Then he stated he was not working in a field while pesticides were being sprayed. He said personal protective equipment was provided according to labeling.
8. During the inspection and interviews it was determined that the Respondent:
- a) failed to post specific information regarding pesticide applications of Check Maleic Hydrazide 15, Fair 85 and Prime+ EC;
  - b) failed to post a Worker Protection Safety poster;
  - c) failed to make available label required personal protective equipment; and
  - d) failed to provide decontamination supplies.
9. The registered labels for Check Maleic Hydrazide 15, Fair 85 and Prime+ EC contain the following language:

**AGRICULTURAL USE REQUIREMENTS**

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170.

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1805---

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."

§ 170.120 Notice of applications.

- (d) Oral warnings. The agricultural employer shall provide oral warnings to workers in a manner that the worker can understand. If a worker will be on the premises during the application, the warning shall be given before the application takes place. Otherwise, the warning shall be given at the beginning of the worker's first work period during which the application is taking place or the restricted-entry interval for the pesticide is in effect. The warning shall consist of:
- (1) The location and description of the treated area.
  - (2) The time during which entry is restricted.
  - (3) Instructions not to enter the treated area until the restricted-entry interval has expired.

§ 170.122 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

- (a) Location, accessibility, and legibility. The information shall be displayed in the location specified for the pesticide safety poster in § 170.135(d) and shall be accessible and legible, as specified in § 170.135(e) and (f).
- (b) Timing.
  - (1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.
  - (2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.
  - (3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.
- (c) Required information. The information shall include:
  - (1) The location and description of the treated area.
  - (2) The product name, EPA registration number, and active ingredient(s) of the pesticide.
  - (3) The time and date the pesticide is to be applied.

- (4) The restricted-entry interval for the pesticide.

§ 170.135 Posted pesticide safety information.

(a) Requirement. When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, pesticide safety information.

(b) Pesticide safety poster.

§ 170.150 Decontamination.

(a)(1) Requirement. The agricultural employer must provide decontamination supplies for workers in accordance with this section whenever:

(i) Any worker on the agricultural establishment is performing an activity in the area where a pesticide was applied or a restricted-entry interval (REI) was in effect within the last 30 days, and;

(ii) The worker contacts anything that has been treated with the pesticide, including, but not limited to soil, water, plants, plant surfaces, and plant parts.

(b) General conditions.

(1) The agricultural employer shall provide workers with enough water for routine washing and emergency eyeflushing. At all times when the water is available to workers, the employer shall assure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

(3) The agricultural employer shall provide soap and single-use towels in quantities sufficient to meet worker's needs.

(c) Location.

(1) The decontamination supplies shall be located together and be reasonably accessible to and not more than 1/4 mile from where workers are working.

§ 170.222 Providing specific information about applications.

When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the same location specified for the pesticide safety poster in § 170.235(d) of this part and shall be accessible and legible, as specified in § 170.235(e) and (f) of this part.

(b) Timing.

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the

information shall be posted at the beginning of any such handler's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until the handlers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

#### § 170.235 Posted pesticide safety information.

(a) Requirement. When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, pesticide safety information.

(b) Pesticide safety poster.

#### § 170.240 Personal protective equipment.

(a) Requirement. Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.

(c) Provision. When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall provide the appropriate personal protective equipment in clean and operating condition to the handler.

(e) Use of personal protective equipment.

(1) The handler employer shall assure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

#### § 170.250 Decontamination.

(a) Requirement. During any handling activity, the handler employer shall provide for handlers, in accordance with this section, decontamination supplies for washing off pesticides and pesticide residues.

(b) General conditions.

(1) The handler employer shall provide handlers with enough water for routine washing, for emergency eyeflushing, and for washing the entire body in case of an emergency. At all times when the water is available to handlers, the handler employer shall assure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

(3) The handler employer shall provide soap and single-use towels in quantities sufficient to meet handlers' needs.

(4) The handler employer shall provide one clean change of clothing, such as coveralls, for use in an emergency.

(c) Location. The decontamination supplies shall be located together and be reasonably accessible to and not more than 1/4 mile from each handler during the handling activity.

(d) Emergency eyeflushing. To provide for emergency eyeflushing, the handler employer shall assure that at least 1 pint of water is immediately available to each handler who is performing tasks for which the pesticide labeling requires protective eyewear. The eyeflush water shall be carried by the handler, or shall be on the vehicle or aircraft the handler is using, or shall be otherwise immediately accessible.

(e) Decontamination after handling activities. At the end of any exposure period, the handler employer shall provide at the site where handlers remove personal protective equipment, soap, clean towels, and a sufficient amount of water so that the handlers may wash thoroughly.

02 N.C. Admin. Code 9L .1807---

(a) Concerning application information requirements contained in Sections 170.122 and 170.222 the following is also required to be completed by the agricultural employer:

(1) In addition to the requirements of Sections 170.122(c)(3), and 170.222(c)(3), the specific time of day when each pesticide application was completed must be recorded immediately upon completion of the application. Each day of the application shall be recorded as a separate record.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of one thousand five hundred dollars (\$1,500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

(b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand five hundred dollars (\$1,500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand five hundred dollars (\$1,500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

William Davy Hobson

William Davy Hobson  
1940 Union Grove Church Road  
Yadkinville, NC 27055

Jan. 30-14  
Date

James W. Burnette, Jr.

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

2/17/2014  
Date

Barry H. Bloch

Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

4 FEBR 2014  
Date

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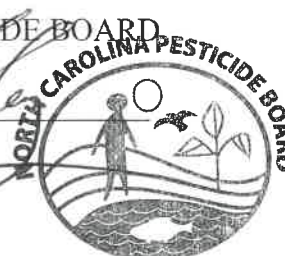
APPROVED AND ORDERED FILED,

this the 11<sup>th</sup> day of March, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY: [Signature]

Chairman



2012-82

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Hobson, Davey

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement with discussion.

Settlement conference was held with Dwight Seal.



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-84

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

GINGER M. DAWSON, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Ginger M. Dawson, Respondent.

1. At all times pertinent to this matter, Respondent was employed by the NCDOT Roadside Environmental Unit, 230 NC Highway 42 West, Ahoskie, North Carolina, and held Public Operator License No. 6339.
2. On August 27, 2012 Complainant's inspector investigated a complaint by Douglas E. Maxwell, 112 Park Road, Creswell, Washington County, North Carolina, regarding damage to his soybeans.
3. Complainant's inspector met with Mr. Maxwell at his soybean field adjacent to US Highway 64 in Creswell, North Carolina, and observed wrinkled leaves at the top of Mr. Maxwell's soybean plants closest to US Highway 64.
4. Complainant's inspector met with Patricia P. Mansfield, NCDOT Roadside Environmental Engineer. Ms. Mansfield provided the NCDOT Daily Pesticide Application Form for July 26, 2012 that showed the Respondent applied Confront (triclopyr and clopyralid), EPA Reg. No. 62719-92, a selective post-emergent herbicide, Class I, Danger; and Plateau (ammonium salt of imazapic), EPA Reg. No. 241-365, a herbicide, Class III, Caution, to the US Highway 64 right-of-way adjacent to Mr. Maxwell's soybean field.
5. On August 31, 2012 Complainant's inspector met with the Respondent. The Respondent confirmed that on July 26, 2012 she had applied Confront and Plateau to the US Highway 64 right-of-way adjacent to Mr. Maxwell's soybean field.

6. Complainant's inspector collected samples including the following:

CH-28 vegetation, target  
CH-29 soil, target

7. Laboratory analysis of sample CH-28 revealed the presence of imazapic, clopyralid and triclopyr.

Laboratory analysis of sample CH-29 revealed the presence of imazapic.

8. Complainant's inspector took photographs of the damaged soybean plants. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, examined the photographs and discussed the case with the Complainant's inspector. Dr. Wade provided the following statement:

To a reasonable degree of scientific certainty, the damage to the soybean plants owned by Doug Maxwell was caused by triclopyr and clopyralid that was applied by an NCDOT employee. This application of Confront herbicide occurred on July 26, 2012. On June 20, 2012 an employee of Asplundh applied Garlon 3A that contains triclopyr to the powerline rights-of-way near Doug Maxwell's soybean field. If the damage had been caused by the Garlon 3A application, it would be visible on the oldest growth of the soybeans, which did not occur with the soybeans that Chris Hassell inspected.

9. The registered label for Confront contains the following language:

**Do not** apply Confront directly to, or allow spray drift to come into contact with, flowers, grapes, tomatoes, potatoes, beans, lentils, peas, alfalfa, sunflowers, soybeans, safflower, or other desirable broadleaf crops and ornamental plants or soil where these sensitive crops will be planted the same season.

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies she is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and her consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges her right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if she fails to pay the total agreed upon sum of one thousand dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges her right to judicial review of the civil penalty assessment in paragraph 12(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Ginger M. Dawson  
Ginger M. Dawson  
NCDOT Roadside Environmental Unit  
230 NC Highway 42 West  
Ahoskie, NC 27910

2/5/2014  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

2/17/2014  
Date

Barry H. Bloch  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

2/7/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 11<sup>th</sup> day of March, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY: [Signature]  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Ginger M. Dawson,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Ms. Patricia P. Mansfield, NCDOT Roadside Environmental Engineer, for Ms.  
Ginger M. Dawson, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-85

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

ROY B. GOFORTH, JR.,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Roy B. Goforth, Jr., Respondent.

1. At all times pertinent to this matter, Respondent was the president of Arrow Exterminators of Fayetteville, Inc., 325 Winslow Street, Fayetteville, North Carolina, and held Ground Applicator License No. 444.
2. On August 29, 2012, Sgt. Kent Barefoot with the NC Wildlife Resources Commission contacted Complainant's inspector. Sgt. Barefoot reported that the Respondent poisoned 20 Canada geese at the Highland Country Club in Fayetteville, Cumberland County, North Carolina.
3. On August 30, 2012, Complainant's inspector met with Sgt. Barefoot. Sgt. Barefoot provided a signed statement from the Respondent dated August 29, 2012. In the statement, the Respondent admitted killing 20 Canada geese at the Highland Country Club in Fayetteville, North Carolina. Sgt. Barefoot also provided photographs of the dead Canada geese.
4. On September 18, 2012, Complainant's inspector met with the Respondent at Arrow Exterminators of Fayetteville.
5. The Respondent stated that after playing golf at the Highland Country Club on June 2, 2012, he decided to feed the geese. He went to his office and found some corn in a plastic bag in a storage room. He returned to the golf course and spread the corn for the geese to eat. He said he did not realize the corn was a pesticide.

6. When the Respondent became aware of the dead geese on June 4, 2012, he went to the club and told the manager he may have poisoned the geese with Avitrol (4-aminopyridine), EPA Reg. No. 11649-7 or EPA Reg. No. 11649-8, a pyridine bird repellent, Class IV, Caution, a restricted use pesticide.

7. The registered label for Avitrol contains the following language:

RESTRICTED USE PESTICIDE DUE TO ACUTE AVIAN TOXICITY

Birds that react and alarm a flock usually die.

8. As a result of its investigation, Complainant alleges that the Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

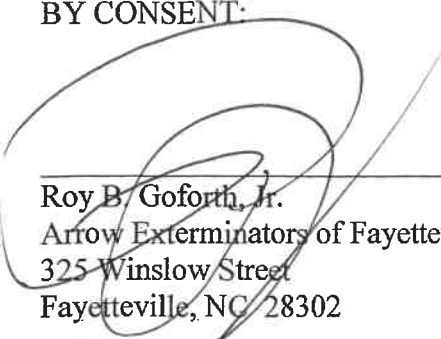
10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of eight hundred dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of eight hundred dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of eight hundred dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.

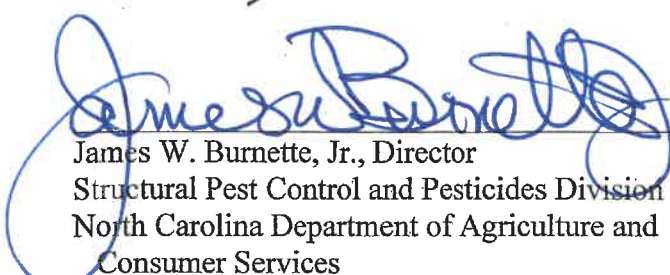


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Roy B. Goforth, Jr.  
Arrow Exterminators of Fayetteville  
325 Winslow Street  
Fayetteville, NC 28302

January 16, 2014  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

January 31, 2014  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

1/27/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 11<sup>th</sup> day of March

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Roy B. Goforth,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Mr. Gerald Beaver, Attorney, representing Mr. Roy B. Goforth, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-26

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

SALVADOR ESTRADA, JR.,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Salvador Estrada, Jr., Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 84036.
2. On May 15, 2013, Complainant's inspector observed a soil fumigant application taking place in a field adjacent to Mills Gap Road in Fletcher, Henderson County, North Carolina. Complainant's inspector noted Fumigant Treated Area signs had not been posted at the treatment site or buffer zone. Complainant's inspector observed several applicators wearing half face respirators.
3. Complainant's inspector met with Salvador Estrada, Sr., at the site. Mr. Estrada, Sr., stated that he and his son, the Respondent, lease the tomato field.
4. Complainant's inspector contacted the Respondent in Florida. The Respondent stated that he was unaware of the new safety measures for soil fumigants.
5. Complainant's inspector advised the Respondent to immediately cease the application and not resume until he complies with the following requirements listed on the Pic-Clor 60 (1,3-dichloropropene and chloropicrin), EPA Reg. No. 8536-8-87994, a soil fumigant, Class I, Danger, label:
  - a) a certified applicator who has completed a soil fumigant training program is obtained to supervise the fumigation;
  - b) a site-specific fumigation management plan (FMP) is prepared;

- c) each handler participating in the application has received fumigant safe handling information; and
  - d) Fumigant Treated Area signs are posted.
6. Complainant's inspector returned to the field at 6:00 p.m. and met with Mr. Estrada, Sr., and Armando Sanchez. Mr. Sanchez is employed by Bud Laughter of Perez Brothers Farms. Mr. Sanchez has completed an approved soil fumigant training program; however, he is not certified as an applicator.
7. Mr. Sanchez stated that Mark Lancaster, an employee of Coastal Chemical in Hendersonville, North Carolina, completed the FMP. Mr. Sanchez said he provided fumigant safe handling information to each handler involved in the application.
8. Complainant's inspector noted that Worker Protection Standard signs had been posted at the site instead of the required Fumigant Treated Area signs.
9. On May 17, 2013, Complainant's inspector met with Mr. Estrada, Sr., at the field. Complainant's inspector noted that the Worker Protection Standard signs had not been replaced with the required Fumigant Treated Area signs.
10. Mr. Estrada, Sr., stated that they finished the application on May 16, 2013. Complainant's inspector reviewed the FMP and advised him to include a post-application summary in the FMP.
11. Complainant's inspector further advised Mr. Estrada, Sr., to post the required Fumigant Treated Area signs.
12. During the inspection, Complainant's inspector determined that none of the handlers wearing respirators had been fit tested prior to the fumigation.
13. The registered label for Pic-Clor 60 contains the following language:

#### Agricultural Use Requirements

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170.

#### Site-Specific Fumigation Management Plan (FMP)

Prior to the start of application, the certified applicator supervising the application must verify that a site-specific FMP exists for each application block. In addition, an agricultural operation fumigating multiple application blocks may format the FMP in a manner whereby all of the information that is common to all the application blocks is captured once, and any information unique to a particular application block or blocks is captured in subsequent sections.

The FMP must be prepared by the certified applicator, the site owner, registrant, or other party.

The certified applicator supervising the application must verify in writing (sign and date) that the site-specific FMP(s) reflects current site conditions before the start of application.

#### Notification

Notify workers of the application by warning them orally and by posting Fumigant Treated Area signs. The signs must bear the skull and crossbones symbol and state:

- "DANGER/PELIGRO,"
- "Area under fumigation, DO NOT ENTER/NO ENTRE,"
- "Methyl Bromide and Chloropicrin Fumigant in USE,"
- the date and time of fumigation,
- the date and time entry restricted period is over,
- " Pic-Clor 60," and
- Name, address, and telephone number of the certified applicator in charge of the fumigation.

Post the Fumigant Treated Area sign instead of the WPS sign for this application, but follow all WPS requirements pertaining to location, legibility, text size, and sign size (40 CFR §170.120).

Post Fumigant Treated Area signs at all entrances to the application block no sooner than 24 hours prior to application.

#### **Respirator Fit Testing, Medical Qualification, and Training:**

Using a program that conforms to OSHA's requirements (see 29 CFR Part 1910.134), employers must verify that any handler who uses a respirator is:

- Fit-tested and fit-checked

#### Protection for Handlers

##### **Supervision of Handlers:**

For all applications, from the start of the application until the application is complete, a certified applicator must be at the application block in the line of sight of the application and must directly supervise all persons performing handling activities.

The certified applicator must provide Fumigant Safe Handling Information to each handler or confirm that within the past 12 months, each handler has received Fumigant Safe Handling Information in a manner that he/she can understand.

14. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4), and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1805---

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."

§ 170.120 Notice of applications.

(c) Posted warning signs. The agricultural employer shall post warning signs in accordance with the following criteria:

(1) The warning sign shall have a background color that contrasts with red. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," shall be at the top of the sign, and the words "KEEP OUT" and "NO ENTRE" shall be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in a shade that contrasts with red. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the appearance of the sign or change the meaning of the required information. A black-and-white example of a warning sign meeting these requirements, other than the size requirements, follows:

(2) The standard sign shall be at least 14 inches by 16 inches with letters at least 1 inch in height. Farms and forests shall use the standard size sign unless a smaller sign is necessary because the treated area is too small to accommodate a sign of this size. In nurseries and greenhouses, the agricultural employer may, at any time, use a sign smaller than the standard size sign. Whenever a small sign is used on any establishment, there are specific posting distances depending on the size of the lettering and symbol on the sign. If a sign is used with DANGER and PELIGRO in letters at least 7/8 inch in height and the remaining letters at least 1/2 inch in height and a red circle at least 3 inches in diameter containing an upraised hand and a stern face, the signs shall be no further than 50 feet apart. If a sign is used with DANGER and PELIGRO in letters at least 7/16 inch in height and the remaining letters at least 1/4 inch in height and a red circle at least 1 1/2 inches in diameter containing an upraised hand and a stern face, the signs shall be no further than 25 feet apart. A sign with DANGER and PELIGRO in letters less than 7/16 inch in height or with any words in letters less than 1/4 inch in height or a red circle smaller than 1 1/2 inches in diameter containing an upraised hand and a stern face will not satisfy the requirements of the rule. All signs must meet the requirements of paragraph (c)(1) of this section.

(3) The employer may replace the Spanish portion of the warning sign with a non-English language read by the largest group of workers who do not read English. The replacement sign must be in the same format as the original sign and be visible and legible.

(4) On farms and in forests and nurseries, the signs shall be visible from all usual points of worker entry to the treated area, including at least each access road, each border with any labor camp adjacent to the treated area, and each footpath and other walking route that enters the treated area. When there are no usual points of worker entry, signs shall be posted in the corners of the treated area or in any other location affording maximum visibility.

(5) In greenhouses, the signs shall be posted so they are visible from all usual points of worker entry to the treated area including each aisle or other walking route that enters the treated area. When there are no usual points of worker entry to the treated area, signs shall be posted in the corners of the treated area or in any other location affording maximum visibility.

(6) The signs shall:

(i) Be posted no sooner than 24 hours before the scheduled application of the pesticide.

(ii) Remain posted throughout the application and any restricted-entry interval.

(iii) Be removed within 3 days after the end of the application and any restricted-entry interval and before agricultural-worker entry is permitted, other than entry permitted by § 170.112.

(7) The signs shall remain visible and legible during the time they are posted.

(8) When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker entry, other than entry permitted by § 170.112, is prohibited for the entire area while the signs are posted.

15. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

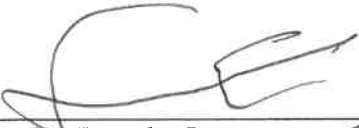
16. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 16(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 16(c) of this Agreement.

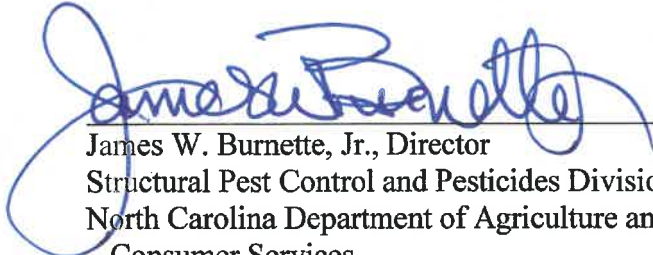


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Salvador Estrada, Jr.  
931 Pope Field Road  
Easley, SC 29642

4-17-2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

5/6/2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

5/2/2014  
\_\_\_\_\_  
Date

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APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of May, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Salvador Estrada, Jr.

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement with discussion.

Settlement conference was held with Dwight Seal.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-61

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

CHARLES H. WAINWRIGHT, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. § 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Charles H. Wainwright, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 57759.
2. On June 25, 2012 Complainant's Pesticide Specialist investigated a complaint by Ulysis E. Johnson, Jr., 4617 Corey Road, Winterville, Pitt County, North Carolina, regarding damage to a river birch tree on his property from a pesticide application to an adjacent field. This application was made on June 9, 2012.
3. Complainant's Pesticide Specialist met with Mr. Johnson at his residence and observed damage to his river birch tree.
4. Complainant's Pesticide Specialist determined the Respondent leases the field adjacent to Mr. Johnson's property.
5. Complainant's Pesticide Specialist contacted the Respondent. The Respondent stated that he applied Gramoxone Inteon (paraquat), EPA Reg. No. 1217, a desiccant/defoliant herbicide, Class I, Danger-Poison, and Prefix Herbicide (s-metolachlor and fomesafen), EPA Reg. 100-1268, a preemergent herbicide, Class II, Warning, to the field adjacent to Mr. Johnson's property before planting soybeans.

6. Complainant's Pesticide Specialist collected samples including the following:

MM-1 vegetation, Ulysis E. Johnson's river birch tree  
MM-3 soil, target

7. Laboratory analysis of sample MM-1 revealed the presence of metolachlor and paraquat.

Laboratory analysis of sample MM-3 revealed the presence of metolachlor, fomesafen and paraquat.

8. The registered label for Gramoxone Inteon contains the following language:

Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas.

The registered label for Prefix contains the following language:

Do not apply when weather conditions favor drift from target area.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;  
(4) Operated in a faulty, careless, or negligent manner;

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

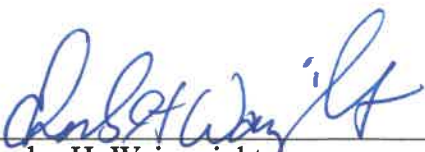
(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

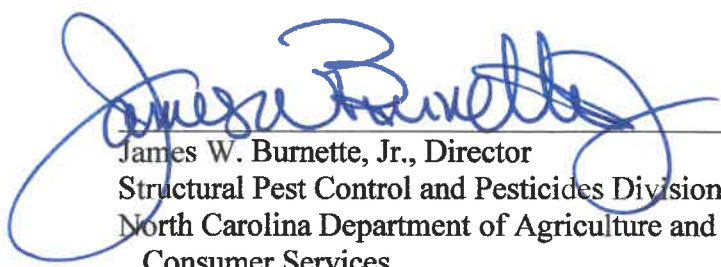
- (a) That Respondent agrees to pay the sum of six hundred fifty dollars (\$650.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred fifty dollars (\$650.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred fifty dollars (\$650.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Charles H. Wainwright  
3278 Speight Seed Farm Road  
Winterville, NC 28590

3/28/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

4/11/2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

4/14/2014  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of May, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



2012-61

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Charles Wainwright

**Respondent,**

Supplemental Information

Settlement conference was held with Charles Wainwright by Dwight Seal, Western District Manager.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-69

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

CHARLES G. LEWIS & GREENWOOD  
HELICOPTERS, INC.,

Respondents.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Charles G. Lewis & Greenwood Helicopters, Inc., Respondents.

1. At all times pertinent to this matter, Respondent Charles G. Lewis (hereinafter, "Respondent Lewis") was the president of Greenwood Helicopters, Inc., P.O. Box 280, Washington, North Carolina, and, Greenwood Helicopters, Inc., is a corporation incorporated and existing under the laws of the State of North Carolina.
2. At all times pertinent to this matter, Respondent Lewis held Aerial Applicator (Pilot) License No. 206.
3. On July 25, 2012 Complainant's inspector investigated a complaint by Christopher T. Furlough regarding damage to his cotton field adjacent to Morrattock Road in Plymouth, Washington County, North Carolina. The damage was first noticed on July 14, 2012.
4. Mr. Furlough believes drift from an aerial pesticide application to an adjacent timber tract owned by Weyerhaeuser damaged his cotton crop. The aerial application was made by Respondent Lewis.
5. On July 26, 2012 Complainant's inspector met with Respondent Lewis. Respondent Lewis stated that on July 3, 2012 he had applied Accord XRT II (glyphosate), EPA Reg. No. 62719-556, a herbicide, Class III, Caution; and Chopper Gen2 (imazapyr), EPA Reg. No. 241-430, a herbicide, Class III, Caution, to Weyerhaeuser's timber tract adjacent to Mr. Furlough's cotton field.



6. Complainant's inspector collected the following samples:

PS-16 vegetation, Christopher Furlough's cotton field

PS-17 soil, Christopher Furlough's cotton field

PS-18 vegetation, target

PS-19 soil, target

7. Laboratory analysis of sample PS-16 revealed the presence of imazapyr.

Laboratory analysis of samples PS-17 and PS-19 revealed the presence of imazapyr, AMPA and glyphosate.

Laboratory analysis of sample PS-18 revealed the presence of imazapyr and glyphosate.

8. The registered label for Accord XTR II contains the following language:

Avoid contact of herbicide with foliage, green stems, exposed non-woody roots or fruit of crops (except crops with the Roundup Ready® herbicide tolerant gene), desirable plants and trees, because severe injury or destruction may result.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---


(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

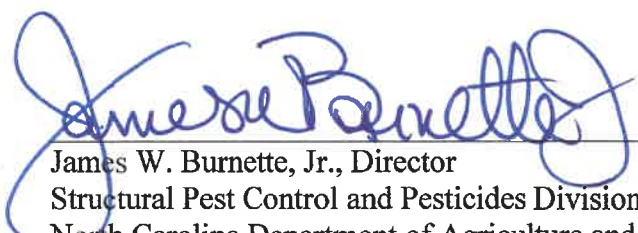
- (a) That Respondents agree to pay the sum of one thousand fifty dollars (\$1,050.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondents acknowledge their right to a formal hearing to resolve this matter and waive said right by consenting to the terms of this Agreement;
- (c) That Respondents agree that if they fail to pay the total agreed upon sum of one thousand fifty dollars (\$1,050.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand fifty dollars (\$1,050.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondents acknowledge their right to judicial review of the civil penalty assessment in paragraph 11(c) and waive said right by consenting to the terms of this Agreement. Respondents further agree that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Charles G. Lewis, individually, and as President  
of Greenwood Helicopters, Inc.  
Greenwood Helicopters, Inc.  
P.O. Box 280  
Washington, NC 27889

3-30-2014  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

4-3-2014  
Date

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

4/14/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of May

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



2012-69

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Charles G. Lewis

**Respondent,**

Supplemental Information

Settlement conference was held with Charles G. Lewis by Dwight Seal, Western District Manager.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-83

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

DIRK FROMMANN,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Dirk Frommann, Respondent.

1. At all times pertinent to this matter, Respondent was employed by Williamsburg Air Service, Inc., 77 Birchwood Drive, Kingstree, South Carolina, and held Aerial Applicator (Pilot) License No. 802.

2. On or about August 16, 2012 Complainant's inspector became aware of aerial pesticide applications to corn fields in the Mills River, Henderson County, North Carolina, area.

3. Complainant's inspector determined the aerial applications were made by the Respondent.

4. Complainant's inspector also determined the aircraft used for these aerial applications was not licensed in North Carolina in 2012.

5. On August 22, 2012 Complainant's inspector contacted the Respondent. The Respondent stated he failed to have the helicopter licensed prior to applying Headline Amp (pyraclostrobin and metconazole), EPA Reg. No. 7969-291, a fungicide, Class II, Warning, in North Carolina.

6. On August 23, 2012 Complainant's inspector met with the Respondent and conducted an inspection. Complainant's inspector inspected and licensed the helicopter to apply pesticides in North Carolina.

7. Complainant's inspector reviewed the Respondent's pesticide application records and determined that he failed to complete written records within 72 hours after each application and failed to include all the required information for each application.

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § N.C. Gen. Stat. § 143-452(b)---

(b) Applications for pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of seventy-five dollars (75.00) for each pesticide applicator's license. In addition, an annual inspection fee of twenty-five dollars (\$25.00) shall be submitted for each aircraft to be licensed. Should any aircraft fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an additional twenty-five dollar (\$25.00) inspection fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with the laws and regulations. All aircraft licensed to apply pesticides shall be identified by a license plate or decal furnished by the Board at no cost to the licensee, which plate or decal shall be affixed on the aircraft in a location and manner prescribed by the Board.

N.C. Gen. Stat. § 143-456(a)(4), (5) and (8)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (8) Operated unlicensed equipment.

02 N.C. Admin. Code 9L .1002(c)---

All agricultural aircraft operations (pilot or contractor) shall keep a written record to be completed within 72 hours after each application. This requirement must be fulfilled sooner if requested by an employee of the Pesticide Section for the purposes of a pesticide incident investigation. The record shall show the following:

- (1) name of contractor;
- (6) the year, month, day, and approximate time the pesticide was applied;
- (10) name of pilot;
- (11) signature of person completing this record.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand two hundred dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand two hundred dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand two hundred dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.

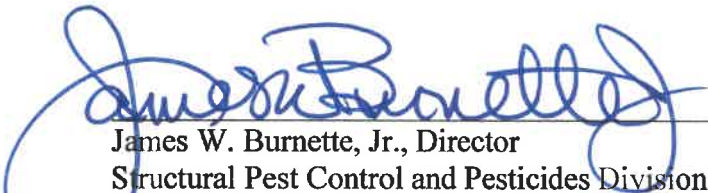
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Dirk Frommann  
Williamsburg Air Service, Inc.  
77 Birchwood Drive  
Kingstree, SC 29556

3-23-2014  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

4-14-2014  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

3/27/2014  
Date


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APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of May, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman





NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Dirk Frommann

**Respondent,**

Supplemental Information

Settlement conference was held with Dirk Frommann by Dwight Seal, Western District Manager.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-4

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

TIMOTHY K. WEADON, SR.,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Timothy K. Weadon, Sr., Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 73634.
2. On January 29, 2013 Complainant's inspector investigated a complaint by Mike Stanley regarding the improper disposal of pesticide containers in a field along NC Highway 62 North in Blanch, Caswell County, North Carolina. Mr. Stanley reported that the field is leased by the Respondent.
3. Complainant's inspector inspected the site and observed approximately 35 pesticide containers in the field bearing labels for the following pesticides:
  - Flupro (flumetralin), EPA Reg. No. 73631-2-400, a plant growth regulator, Class II, Warning;
  - Prime+ EC (flumetralin), EPA Reg. No. 100-640, a plant growth regulator, Class I, Danger;
  - Sucker Plucker (fatty alcohols), EPA Reg. No. 19713-35, a plant growth regulator, Class II, Warning; and
  - Off-Shoot-T (fatty alcohols), EPA Reg. No. 400-542, a plant growth regulator, Class I, Danger.
4. Complainant's inspector noted that the containers had been opened and that most of the containers contained a liquid.

5. Complainant's inspector then contacted the Respondent. The Respondent stated that he had left the pesticide containers in the field from the previous crop season. He said that the used pesticide containers contained a diluted pesticide concentrate that he applied to his tobacco for sucker control using the jug method.
6. The pesticide containers were labeled as nonrefillable and included the statement: Do not reuse or refill this container.
7. The Respondent said that he would properly dispose of his pesticide containers.
8. On February 5, 2013 Complainant's inspector returned to the site and verified that all the pesticide containers had been removed.
9. The registered label for Flupro contains the following language:

STORAGE AND DISPOSAL  
CONTAINER DISPOSAL:

Nonrefillable container

Plastic Containers: Do not reuse or refill this container. Triple rinse container (or equivalent) promptly after emptying. Then offer container for recycling, reconditioning, or puncture and dispose of in a sanitary landfill . . .

The registered label for Prime+ EC contains the following language:

STORAGE AND DISPOSAL

Container Handling [less than 5 gallons]

Non-refillable container. Do not reuse or refill this container. Offer for recycling if available.

The registered label for Sucker Plucker contains the following language:

STORAGE AND DISPOSAL

CONTAINER DISPOSAL:

Nonrefillable Container (rigid material; less than 5 gallons): Do not reuse or refill this container. Offer for recycling, if available. Dispose of empty container in a sanitary landfill . . .

The registered label for Off-Shoot-T contains the following language:

STORAGE AND DISPOSAL

CONTAINER HANDLING:

Nonrefillable Container

Plastic Containers: Do not reuse or refill this container. Triple rinse container (or equivalent) promptly after emptying. Then offer container for recycling, reconditioning, or puncture and dispose of in a sanitary landfill . . .

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, Or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-441(c)---

(c) No person shall dispose of, discard, or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, or to pollute any water supply or waterway, or in any manner contrary to the regulations of the Board.

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .0603(a) and (b)---

(a) Prior to disposal, all pesticide containers shall be thoroughly emptied, using the practices commonly employed to remove materials from that type of container; e.g., shaking, pumping, pouring, triple-rinsing (or equivalent) and draining into the application tank. The materials so removed shall be applied to the labeled site or otherwise disposed of in accordance with these rules;

(b) Pesticide containers shall be disposed of in accordance with labeling requirements.

02 N.C. Admin. Code 9L .0604(1), (2) and (5)---

No person shall dispose of any pesticide or pesticide container in any of the following manners:

- (1) in a manner inconsistent with these rules;
- (2) so as to cause or allow open dumping of pesticides or pesticide containers;
- (5) so as to violate any applicable provisions of the North Carolina Pesticide Law.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of eight hundred dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of eight hundred dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of eight hundred dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Timothy K. Weadon, Sr.  
Timothy K. Weadon, Sr.  
681 Weadon Road  
Blanch, NC 27212

3-20-14  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

4-14-2014  
Date

Barry H. Bloch  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

3/28/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of May, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY: Paul Langley  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Timothy K. Weadon,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Timothy K. Weadon, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-43

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

DANIEL O'DELL,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Daniel O'Dell, Respondent.

1. At all times pertinent to this matter, Respondent was employed as a manager at Berry Family Nurseries, 7473 Rock Ridge Road, Sims, North Carolina, and held Private Certification No. 84123.
2. On June 19, 2013, the Section investigated a complaint alleging that a baby's birth defects may have resulted from the mother's exposure to pesticides at Berry Family Nurseries (BFN) in Sims, Wilson County, North Carolina.
3. Complainant's Inspector, Bilingual Specialist and Eastern District Manager met with Ms. Elvira Rios Lauriano at her home. They were accompanied by Ms. Sheila Higgins, North Carolina Department of Health & Human Services (NCDHHS), and Ms. Stephanie Martinez, North Carolina Farmworker Health Program (NCFWHP).
4. Ms. Rios Lauriano has a three month old infant who was born with several birth defects. Her child was born with hydrocephalus ("water on the brain"), a heart defect, no chin, underdeveloped gums and double ears. She told the Complainant's Inspector that she was employed by BFN from 2009 to 2012. She became pregnant while employed at BFN and believes that she may have been exposed to pesticides while working, which may have caused her child's birth defects.



5. Ms. Rios Lauriano told Complaint's Inspector, Bilingual Specialist and Eastern District Manager, and Ms. Higgins and Ms. Martinez that about the end of July or beginning of August 2012 is when she thought she may have been exposed to a pesticide at BFN. She said that on the day in question she was standing with three other employees on the grounds of BFN and a piece of pesticide application equipment came to within 50 to 100 yards from the group. She said that a mist or white smoke was coming out of the pesticide application equipment. She said that she did not see the mist or smoke get onto her body and did not feel it get onto her body. She said that she noticed a strong chemical smell after the application equipment passed near her and that the wind was blowing toward her.

6. Ms. Rios Lauriano said that she, Juan Rios, Rubiselo Rios and Lidia Marion Pereyra were the employees standing and working with her the day of the pesticide exposure. She said that later that day she became ill and started vomiting. She said that she did return to work the next day but was still feeling ill.

7. Ms. Rios Lauriano also said that on the day of the pesticide exposure there was a large amount of dead fish in one of the ponds on the grounds of BFN. She said that she stayed at work that day but made an appointment with the doctor for the next day because she still felt ill. She saw the doctor at the Edgecombe County Health Department. She said that during this doctor appointment she found out she was pregnant.

8. Ms. Martinez determined that Ms. Rios Lauriano's healthcare examination at the Edgecombe County Health Department was on July 16, 2012. Therefore, the pesticide application Ms. Rios Lauriano described occurred on July 13, 2012.

9. Ms. Rios Lauriano told Complainant's Inspector that her primary job at BFN was to plant new plants in new plastic pots. She said that she worked in several areas at the nursery. She said that she watched the WPS safety video when she was hired at BFN.

10. Complainant's Inspector asked her if she ever saw any signs at the nursery that warned employees not to enter an area because pesticides had been applied there. She answered that she was aware of the signs and knew that it meant not to enter the area until the sign was removed. She told Complaint's Inspector, Bilingual Specialist and Eastern District Manager, and Ms. Higgins and Ms. Martinez that her BFN supervisor, Gilberto, had told her to go into the areas before the signs were removed to do some weeding. She said she told him she should not go into the areas but Gilberto told her to go into the areas anyway.

11. Ms. Rios Lauriano said that she did not apply or handle pesticides at BFN or anywhere else while she was pregnant. She denied that any pesticides were applied at or near her home while she was pregnant. She said the only safety equipment that she was given at BFN were rubber gloves. She said she wore long sleeved shirts, long pants, shoes and socks while she was employed at BFN.

12. Ms. Rios Lauriano said she had never seen the WPS safety poster. She did not know where the pesticide application records were kept at BFN. She said she thinks she quit her job at BFN sometime in August of 2012. She said she never told her employers at BFN that she was

ill. She said she continued vomiting and having headaches for two months from the day the application equipment was near her, on July 13, 2012.

13. Ms. Rios Lauriano said that the only time she ever got sick was while working at BFN. She also said she knew of a co-worker named "Antonia" who had a miscarriage while employed at BFN.

14. Complaint's Inspector, Bilingual Specialist and Eastern District Manager, and Ms. Higgins and Ms. Martinez visited BFN and met with a manager, the Respondent. The Respondent did not remember Ms. Rios Lauriano. He checked with the BFN Human Resources department and found that she had been employed at BFN from January 6, 2011, to August 10, 2012. BFN's records indicated that she was employed there as a "potter." The Respondent said that a "potter" takes young plants that are grown in BFN's greenhouses and re-plants them into new plastic pots. The Respondent said that these plants are never treated with pesticides in the greenhouse and have no pesticide residues on them when they are re-planted. The Respondent said that after the potters re-plant the plants in new pots the plants are left in the field. The field plants are then treated as needed with various pesticides. The Respondent said there would be no reason for a potter to go back into a field where the potting has been completed. The Respondent said that the plant medium they use has been treated with Talstar G (bifenthrin), EPA Reg. No. 279-3130, a pyrethroid insecticide, Class II, Warning. The Respondent said that BFN has no application records of applying Talstar G.

15. The Complainant's Inspector spoke with Lidia Marion Pereyra, a potter at BFN. Ms. Rios Lauriano had said that Ms. Pereyra was standing alongside her on July 13, 2012, the day she may have been exposed to pesticides. Ms. Pereyra said that she knows Ms. Rios Lauriano. Complainant's Inspector asked Ms. Pereyra if she remembered pesticide application equipment coming near her and Ms. Rios Lauriano. Ms. Pereyra said she could not remember any such incident. Complainant's Inspector asked Ms. Pereyra if she feels like she has ever been exposed to any pesticides while being employed at BFN. Ms. Pereyra said that she does not feel like she has been exposed to pesticides by contact or drift. Complainant's Inspector asked Ms. Pereyra if she has ever become ill or sick from any pesticide applications while being employed at BFN. Ms. Pereyra said she has never been sick or ill from any pesticide applications. He asked Ms. Pereyra if she had ever seen the (WPS) training video or the (WPS) safety poster as a handler/worker. Ms. Pereyra said that she had seen them both. Complainant's Inspector asked Ms. Pereyra if she knew where the application records for pesticides being applied at BFN were being kept. Ms. Pereyra said she was not sure where the application records were being kept.

16. Complainant's Inspector told the Respondent that all records of applications must be maintained at the central notification posting area and that all employees must know of their location. Complainant's Inspector asked the Respondent if these records were posted prior to the pesticide application taking place and he said they were not. Complainant's Inspector told the Respondent the records of application needed to be posted prior to the application taking place.

17. Complainant's Eastern Manager asked Ms. Pereyra if she had ever seen any signs posted after a pesticide application was done to the grounds at the BFN. Ms. Pereyra said that she had seen the signs many times and knew not to enter these areas until the sign was removed. He

asked Ms. Pereyra if anyone had ever told her to go into an area before the sign was removed. Ms. Pereyra said that no one had ever told her to go into any area before an REI sign was removed.

18. Complainant's Inspector then spoke with Gilberto Durazno. Mr. Durazno is the direct supervisor of the potters at BFN. Mr. Durazno said he remembers Ms. Rios Lauriano. Mr. Durazno said Ms. Rios Lauriano never told him that she felt ill due to pesticide exposure from an application at BFN. Mr. Durazno said Ms. Rios Lauriano told him she was pregnant but never told him that she was sick. Mr. Durazno said he did not tell Ms. Rios Lauriano or any of his other workers to go into a treated area before the REI sign has been removed. Mr. Durazno said BFN tries to keep the potters separated into different work areas away from where pesticide applications may be taking place and workers are working. If any pesticide application equipment is in a general area of any of his potters, the potters are instructed to stay upwind and several hundred yards from the pesticide application.

19. Complainant's Inspector inspected BFN's application records. The records had the starting and ending time of the application, the location and description of the treated area, the product name, the date of the application and the restricted entry interval. The records did not have the EPA registration number and active ingredient(s) of the pesticide. Complainant's Eastern District Manager told the Respondent that the EPA registration number and active ingredient(s) needed to be on the pesticide application records.

20. Complainant's Inspector asked the Respondent for the pesticide application records for the first three weeks of July 2012. Complainant's inspector determined that Phyton 27 AG (copper sulfate pentahydrate), EPA Reg. No. 49538-5, a systemic bactericide and fungicide, Class II, Warning, was applied on July 13, 2012.

21. The Respondent also showed Complainant's inspector the central notification area on the grounds of Section AB of BFN. The central notification area had the WPS poster and records of pesticide applications present. The records at the central notification area did have the EPA registration number and active ingredient(s) on them.

22. On July 8, 2013 Complainant's Inspector and Bilingual Specialist interviewed Rubisela Rios Lauriano and Antonia Juarez, former workers at BFN. Ms. Elvira Rios Lauriano identified Ms. Rubisela Rios Lauriano as a worker that was standing with her on July 13, 2012, the day she believes she was exposed to a pesticide application. Ms. Rubisela Rios Lauriano said she watched the entire WPS safety video while she was employed at BFN and she knew where the pesticide application records were kept at BFN, at the workers' break area. She said she was aware of the treated area posted signs at BFN while she worked there. She said she went into these areas sometimes before the sign was removed. She said her supervisor, Gilberto Duranzo, instructed her to do this. She said she did not feel she was ever directly exposed to pesticides while she was employed at BFN. She said that the closest the pesticide applications were made to her while she was working was about the length of two soccer fields (approximately two hundred yards). She said she recently delivered a child; the baby was healthy and had no complications. She said she did not remember standing with Elvira on the day she feels she may have been exposed to the pesticide application.

23. Complainant's Inspector and Bilingual Specialist interviewed Antonia Juarez. Ms. Juarez said she was told to go into treated areas before the signs were removed by her supervisor at BFN, Gilberto Durazno. She said that the pots had soil in them. The soil was sprayed in the pots and they were told to go in and place new plants in the pots with the treated soil before the sign was removed.

24. The registered label for Talstar contains the following language:

**AGRICULTURAL USE REQUIREMENTS**

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170.

Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 12 hours.

The registered label for Phyton 27 AG contains the following language:

**AGRICULTURAL USE REQUIREMENTS**

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170.

Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 48 hours.

25. That Respondent denies that Respondent is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and Respondent's consent to the terms of this Settlement Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein.

26. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1805---

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."

§ 170.112 Entry restrictions.

(a) General restrictions.

(1) After the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired, except as provided in this section.

§ 170.120 Notice of applications.

(d) Oral warnings. The agricultural employer shall provide oral warnings to workers in a manner that the worker can understand. If a worker will be on the premises during the application, the warning shall be given before the application takes place. Otherwise, the warning shall be given at the beginning of the worker's first work period during which the application is taking place or the restricted-entry interval for the pesticide is in effect. The warning shall consist of:

- (1) The location and description of the treated area.
- (2) The time during which entry is restricted.
- (3) Instructions not to enter the treated area until the restricted-entry interval has expired.

§ 170.122 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the location specified for the pesticide safety poster in § 170.135(d) and shall be accessible and legible, as specified in § 170.135(e) and (f).

(b) Timing.

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

§ 170.222 Providing specific information about applications.

When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the same location specified for the pesticide safety poster in § 170.235(d) of this part and shall be accessible and legible, as specified in § 170.235(e) and (f) of this part.

(b) Timing.

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any such handler's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until the handlers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

27. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---


(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

28. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

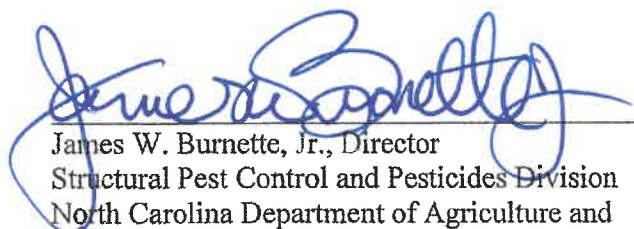
- (a) That Respondent agrees to pay the sum of one thousand one hundred dollars (\$1,100.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand one hundred dollars (\$1,100.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand one hundred dollars (\$1,100.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 28(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 28(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Daniel O'Dell  
Berry Family Nurseries  
7437 Rock Ridge Road  
Sims, NC 27880

4/29/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

5/5/2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

5/6/2014  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of May, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman





NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

DANIEL O' DELL,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Ms. Patty Gill, Attorney, representing Mr. Daniel O'Dell, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-058D

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

WEPAC CORPORATION,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Wepak Corporation, Respondent.

1. At all times pertinent to this matter, Respondent registered the product Wepak Lemon Disinfectant, EPA Reg. No. 10324-157-39272, with Complainant.

2. On May 14, 2013, the Complainant obtained and tested the following sample of Wepak Lemon Disinfectant:

Batch No.	Sample Date	Lab No.	Results	Date of Statewide Stop-Sale Order
0413	05/14/2013	13D11	Ineffective against <i>P. aeruginosa</i>	07/18/2013

3. Laboratory analysis revealed batch number 0413 of Wepak Lemon Disinfectant was adulterated in that it was ineffective against *P. aeruginosa*.

4. On July 18, 2013, the Complainant notified Respondent by letter that Complainant's field staff would be placing a Stop-Sale Order for this deficiency where containers of Wepak Lemon Disinfectant, batch number 0413, were found in the channels of trade. The Complainant requested that Respondent remove all containers from this lot or batch number from channels of trade in North Carolina.

5. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(a)(5)---

(a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(5) Any pesticide which is adulterated or misbranded, (or any device which is misbranded).

6. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

7. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of six hundred dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

(b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

(c) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;


(d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 7(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 7(c) of this Agreement.

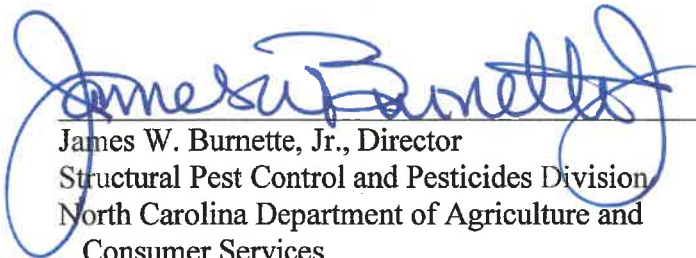
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:


 President

R. J. Poffenbarger  
Wepak Corporation  
P.O. Box 36803  
Charlotte, NC 28236

  
Date

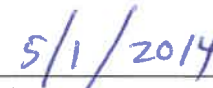


James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of May, 2014

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



2013-58D

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Wepak, Inc.

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

Settlement conference was not held.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-001F

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

CONTROL SOLUTIONS, INC.,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Control Solutions, Inc., Respondent.

1. At all times pertinent to this matter, Respondent registered the product Martin's Horse & Stable Multi-Use Insecticide & Repellent Spray RTU, EPA Reg. No. 53883-26, with Complainant.
2. From September 16, 2013 through November 13, 2013 the Pesticide Section obtained the following samples of Martin's Horse & Stable Multi-Use Insecticide & Repellent Spray RTU to analyze the formulation for the active ingredient, permethrin:

Batch No.	Sample Date	Lab No.	Results	Date of Statewide Stop-Sale Order
22479	09/16/2013	13F-0375	Deficient in permethrin	10/31/2013
23311	11/13/2013	13F-0482	Deficient in permethrin	01/06/2014

3. Laboratory analysis revealed batch number 22479 of Martin's Horse & Stable Multi-Use Insecticide & Repellent Spray RTU was deficient in permethrin.
4. Laboratory analysis revealed batch number 23311 of Martin's Horse & Stable Multi-Use Insecticide & Repellent Spray RTU was deficient in permethrin.

5. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(a)(5)---

(a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(5) Any pesticide which is adulterated or misbranded, (or any device which is misbranded).

6. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

7. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of six hundred dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

(b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

(c) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

(d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 7(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 7(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Sharon Cooley

3-31-14  
Date

Control Solutions, Inc.  
5903 Genoa-Red Bluff Road  
Pasadena, TX 77507

James W. Burnette, Jr.

4-4-2014  
Date

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

Barry H. Bloch

4/14/2014  
Date

Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of May

NORTH CAROLINA PESTICIDE BOARD

BY:

Ray Lang  
Chairman





2014-001F

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Control Solutions, Inc.

**Respondent,**

Supplemental Information

Settlement conference was not held with Control Solutions. Respondent paid civil penalty without discussion.

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

COUNTY OF WAKE

File No. IR2012-66

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

GREG JENKINS,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Greg Jenkins, Respondent.

1. At all times pertinent to this matter, Respondent was employed by East Duplin High School, 394 North NC 111 Highway, Beulaville, North Carolina.

2. On July 6, 2012, Complainant's inspector investigated a complaint by George Byron Thomas, 111 North Kennedy Street in Beulaville, Duplin County, North Carolina, regarding pesticide damage to his grapevines.

3. Complainant's inspector met with Mr. Thomas at his vineyard in Beulaville. Complainant's inspector examined Mr. Thomas' grapevines and observed symptoms consistent with 2,4-D exposure. Mr. Thomas stated that he first noticed the damage on his grapevines on June 6, 2012.

4. A corn field farmed by Eddie Earl Griffin is adjacent to Mr. Thomas' vineyard. Mr. Thomas said that Mr. Griffin had not applied any products containing 2,4-D.

5. The athletic fields at Eastern Duplin High School are also adjacent to Mr. Thomas' vineyard. He said that employees at East Duplin High School had applied SpeedZone Southern Broadleaf Herbicide (carfentrazone ethyl, 2,4-D ester, mecoprop-p acid and dicamba acid) to the athletic fields.

6. On July 10, 2012, Complainant's inspector met with Robert Ross, athletic director, at East Duplin High School. Mr. Ross stated that Scott Lewis and the Respondent had applied SpeedZone Southern Broadleaf Herbicide to the athletic fields.

7. Complainant's inspector contacted Mr. Lewis. Mr. Lewis stated that he had applied SpeedZone Southern Broadleaf Herbicide to the athletic fields at the end of June 2012.

8. Complainant's inspector then contacted the Respondent. The Respondent stated that he had applied SpeedZone Southern Broadleaf Herbicide to the athletic fields at the end of May 2012.

9. Complainant's inspector determined that at the time of these applications, no one employed at Eastern Duplin High School was licensed to apply pesticides.

10. Complainant's inspector collected the following samples:

DB-35 vegetation, Mr. Thomas' grapes  
DB-36 soil, Mr. Griffin's corn field

11. Laboratory analysis of these samples did not detect the presence of 2,4-D.

12. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed the case file, including the inspector's photographs. Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to the grapes was consistent with 2,4-D damage.

13. The registered label for SpeedZone Southern Broadleaf Herbicide contains the following language:

Do not apply under circumstances where spray drift may occur to food, forage or other plantings that might be damaged or crops thereof rendered unsafe for sale, use or consumption. Susceptible crops include: cotton, okra, flowers, grapes . . .

14. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4), (5) and (15)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;  
(4) Operated in a faulty, careless, or negligent manner;  
(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

02 N.C. Admin. Code 9L .0503(a)---

(a) The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

15. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

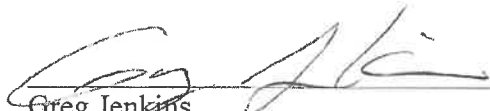
16. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand two hundred dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter, and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand two hundred dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand two hundred dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

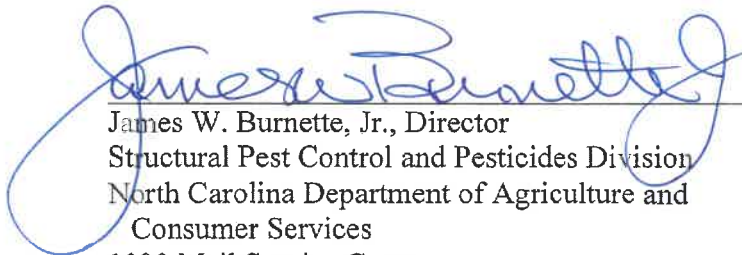
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 16(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 16(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Greg Jenkins  
East Duplin High School  
394 North NC 111 Highway  
Beulaville, NC 28515

9-9-14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

10/22/2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

10/8/2014  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of November

NORTH CAROLINA PESTICIDE BOARD

BY: \_\_\_\_\_

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Jenkins, Greg

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement with discussion.

Settlement conference was held with Barry Bloch.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-94

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
ANTHONY CLARENCE PYRTLE, )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Anthony Clarence Pyrtle, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 78960.
2. On October 11, 2012 the Pesticide Section received a referral from Beth Rodman, a compliance inspector with the NCDOL Agricultural Safety and Health Bureau. Ms. Rodman reported that on October 11, 2012 at 7:30 a.m., seven workers were in a tobacco field that had been treated with Super Boll (ethephon), EPA Reg. No. 228-659, a tobacco growth regulator, Class I, Danger, on October 9, 2012 at 10:00 a.m. The restricted-entry interval for Super Boll is 48 hours.
3. Ms. Rodman also reported that some of the workers were not wearing chemical resistant gloves. The field is located on Hall Road in Westfield, Stokes County, North Carolina, and Joseph Clarence Pyrtle and the Respondent are the owners of the tobacco crop.
4. On October 12, 2012 Complainant's inspector and bilingual specialist met with Joseph Clarence Pyrtle and the Respondent at their farm located at 1104 Hardin Road in Westfield, North Carolina, and conducted a Worker Protection Standard inspection.
5. The Respondent stated he had applied Super Boll to the Moore Farm field on October 9, 2012. This application started at 10:00 a.m. and was completed by 1:00 p.m. He said that chemical resistant gloves are available for the workers.



6. Complainant's bilingual specialist interviewed three H-2A workers. The three workers stated that they began working in the Moore Farm field at 7:00 a.m. on October 11, 2012.

7. During the inspection and interviews it was determined that the Respondent:
- a) allowed workers to enter a treated area before the restricted-entry interval specified on the pesticide labeling had expired;
  - b) failed to post specific information regarding pesticide applications of Prime+ EC (flumetralin), EPA Reg. No. 100-640, a tobacco growth regulator, Class I, Danger, (applied by H-2A workers on July 31, 2012); and Super Boll; and
  - c) failed to provide decontamination supplies after October 1, 2012.

8. The registered label for Prime+ EC contains the following language:

**AGRICULTURAL USE REQUIREMENTS**

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170.

The registered label for Super Boll contains the following language:

**AGRICULTURAL USE REQUIREMENTS**

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170.

Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI) of 48 hours.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:
- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1805---

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."

§ 170.112 Entry restrictions.

(a) General restrictions.

(1) After the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired, except as provided in this section.

§ 170.122 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the location specified for the pesticide safety poster in § 170.135(d) and shall be accessible and legible, as specified in § 170.135(e) and (f).

(b) Timing.

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

§ 170.150 Decontamination.

(a)(1) Requirement. The agricultural employer must provide decontamination supplies for workers in accordance with this section whenever:

(i) Any worker on the agricultural establishment is performing an activity in the area where a pesticide was applied or a restricted-entry interval (REI) was in effect within the last 30 days, and;

(ii) The worker contacts anything that has been treated with the pesticide, including, but not limited to soil, water, plants, plant surfaces, and plant parts.

(b) General conditions.

(1) The agricultural employer shall provide workers with enough water for routine washing and emergency eyeflushing. At all times when the water is available to workers, the employer shall assure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

(3) The agricultural employer shall provide soap and single-use towels in quantities sufficient to meet worker's needs.

(c) Location.

(1) The decontamination supplies shall be located together and be reasonably accessible to and not more than 1/4 mile from where workers are working.

§ 170.222 Providing specific information about applications.

When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the same location specified for the pesticide safety poster in § 170.235(d) of this part and shall be accessible and legible, as specified in § 170.235(e) and (f) of this part.

(b) Timing.

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any such handler's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until the handlers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

02 N.C. Admin. Code 9L .1807---

(a) Concerning application information requirements contained in Sections 170.122 and 170.222 the following is also required to be completed by the agricultural employer:

(1) In addition to the requirements of Sections 170.122(c)(3), and 170.222(c)(3), the specific time of day when each pesticide application was completed must be recorded immediately upon completion of the application. Each day of the application shall be recorded as a separate record.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

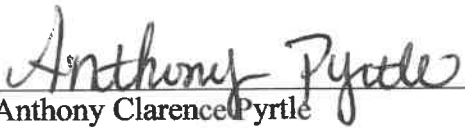
(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

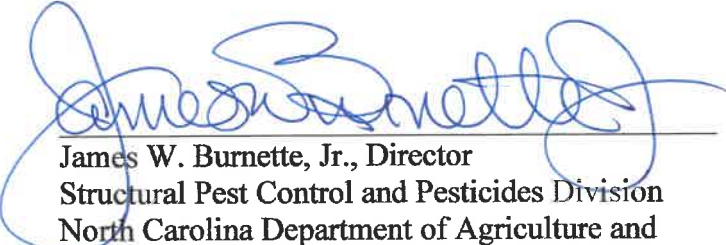
- (a) That Respondent agrees to pay the sum of two thousand dollars (\$2,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of two thousand dollars (\$2,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of two thousand dollars (\$2,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations; two thousand dollars (\$2,000.00)
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Anthony Clarence Pyrtle  
1739 Mickey Road  
Westfield, NC 27053

9/24/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

10/6/2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

9/30/2014  
\_\_\_\_\_  
Date

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APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of November

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Pyrtle, Anthony Clarence

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Anthony Clarence Pyrtle, Respondent  
Dwight E. Seal, Western District Manager.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-48

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

ANDREW Q. EURE, JR.,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Andrew Q. Eure, Jr., Respondent.

1. At all times pertinent to this matter, Respondent was employed by Coastal AgroBusiness, Inc., 12011 NC Highway 125, Hamilton, Martin County, North Carolina, and held Pesticide Dealer License No. No. 4037 and Ground Applicator License No. 6554.
2. On June 24, 2013, Complainant's inspector performed a routine inspection at Coastal AgroBusiness, Inc., 12011 NC Highway 125, Hamilton, North Carolina.
3. During the inspection, Complainant's inspector reviewed sales records and discovered evidence that Coastal AgroBusiness sold restricted use pesticides to non-certified applicators.
4. Complainant's inspector determined that the Respondent sold James C. Boyette the following restricted use pesticides:

Date of Sale	Pesticide	Quantity
April 11, 2013	Telone C-17 Soil Fungicide and Nematicide (dichloropropene and chloropicrin), EPA Reg. No. 62719-12, preplant soil fumigant, Class I, Danger-Poison	110 gallons
April 12, 2013	Telone C-17 Soil Fungicide and Nematicide	550 gallons
May 16, 2013	Paraquat Concentrate (paraquat), EPA Reg. No. 82542-3, bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison	40 gallons

May 17, 2013	Paraquat Concentrate	5 gallons
May 21, 2013	Gramoxone SL 2.0 Herbicide (paraquat), EPA Reg. No. 100-1431, bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison	50 gallons
May 25, 2013	Paraquat Concentrate	35 gallons
June 7, 2013	Paraquat Concentrate	12.5 gallons

5. The Pesticide Section's records reflect that at the time of these sales, James Boyette was not certified as an applicator.

6. James Boyette's Coastal AgroBusiness Statements showed the Respondent's Ground Applicator License No. 6554. The Respondent stated that he thought it was legal to use his license for the sale of a restricted use pesticide to a non-certified applicator. He said Dalton Boyette had been the certified applicator for Boyette Farms. Dalton Boyette's private certification expired December 31, 2009. Dalton Boyette died March 23, 2012.

7. Also, on April 25, 2013, store employees, working under the Respondent's supervision, sold Dr. Jack C. Cole five gallons of Gramoxone SL 2.0 Herbicide.

8. The Pesticide Section's records reflect that at the time of the sale, Dr. Cole was not certified as an applicator.

9. Dr. Cole's Coastal AgroBusiness Statement showed Dr. Phillip W. Thomas' Private Certification No. 76731. Complainant's inspector determined that Dr. Cole was not with Dr. Thomas at the time of the sale and Dr. Cole does not farm with Dr. Thomas.

10. The registered labels for Gramoxone SL 2.0 Herbicide, Paraquat Concentrate and Telone C-17 Soil Fungicide and Nematicide contain the following language:

**RESTRICTED USE PESTICIDE**

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.



N.C. Gen. Stat. § 143-450(b)---

(b) Each pesticide dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use or application of pesticides.

N.C. Gen. Stat. § 143-451(a)(3), (7), (10) and (13)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;
- (7) Made false or fraudulent records, invoices, or reports;
- (10) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;
- (13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

N.C. Gen. Stat. § 143-456(a)(5) and (11)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (11) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;

02 N.C. Admin. Code 9L .1302---

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of two thousand one hundred dollars (\$2,100.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of two thousand one hundred dollars (\$2,100.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of two thousand one hundred dollars (\$2,100.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Andrew Q. Eure, Jr.  
Coastal AgroBusiness, Inc.  
P.O. Box 339  
Hamilton, NC 27840

9-23-2014

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

10/6/2014

Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

9/30/2014

Date

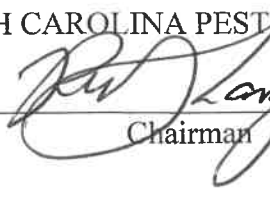
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APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of November, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Andrew Q. Eure, Jr.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

James M. Pearce, on behalf of Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JEFFERY A. TANN, SR.

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD

File No. IR2013-21

IR2013-50

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Jeffery A. Tann, Sr., Respondent.

1. At all times pertinent to these matters, Respondent was employed by Southern States - Hertford Agronomy Center, P.O. Box 645, Hertford, North Carolina, and held Ground Applicator License No. 23721.

IR2013-21

2. On April 24, 2013, Complainant's inspector investigated a complaint by Horace C. Pritchard, Jr., regarding drift from a herbicide application at Justice Family Farms that injured his wheat crop in Belvidere, Perquimans County, North Carolina.

3. Complainant's inspector met with Mr. Pritchard at his wheat fields and observed spotting on the wheat adjacent to Justice Family Farms' fields.

4. Mr. Pritchard stated that Justice Family Farms contracted with Southern States in Hertford, North Carolina, to apply preplant burndown herbicides to their corn fields.

5. Complainant's inspector met with Gil Slagle and Gerald Christian at Southern States - Hertford Agronomy Center, Hertford, North Carolina, and determined that on April 18, 2013, the Respondent and Matthew Woodworth, working under the supervision of the Respondent, applied Gramoxone SL 2.0 Herbicide (paraquat dichloride), EPA Reg. No. 100-1431, a non-selective herbicide, Class I, Danger/Poison; LeadOff (rimsulfuron and thifensulfuron-methyl), EPA Reg. No. 352-853, a herbicide, Class III, Caution; and 2,4-D Lo-V Ester (2,4-D), EPA Reg. No. 1386-

60-72693, a herbicide, Class III, Caution, to the Justice Family Farms' fields adjacent to Mr. Pritchard's wheat fields.

6. Complainant's inspector collected samples including the following:

CH-06 vegetation, target

CH-07 soil, target

CH-08 soil, Mr. Pritchard's wheat field

7. Laboratory analysis of samples CH-06 and CH-07 revealed the presence of paraquat, 2,4-D and rimsulfuron.

Laboratory analysis of sample CH-08 revealed the presence of paraquat.

8. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed photographs in the case file, and Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to Mr. Pritchard's wheat was caused by Southern State's herbicide burndown applications that occurred on April 18, 2013 to Justice Family Farms' fields. The damage was more specifically caused by the paraquat dichloride, the active ingredient in Gramoxone SL 2.0 Herbicide.

9. The registered label for Gramoxone SL 2.0 Herbicide contains the following label language:

Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption.

Do not apply when weather conditions favor drift from treated areas.

IR2013-50

10. On July 2, 2013, Complainant's inspector investigated a complaint by James Godfrey, 563 Puddin Ridge Road, Moyock, Currituck County, North Carolina, regarding damage to his soybeans after a pesticide application to a nearby corn field.

11. Complainant's inspector met with Mr. Godfrey at his soybean field and observed phenoxy herbicide damage on the soybeans. Several fields border Mr. Godfrey's soybean field.

12. On June 4 and 5, 2013, Crop Production Services applied Salvo (2,4-D), EPA Reg. No. 34704-609, herbicide, Class III, Caution, to Mr. Godfrey's corn field adjacent to his soybean field.

13. Justice Family Farms' corn field is located across a drainage ditch from Mr. Godfrey's soybean field.

14. Complainant's inspector noted that the damage to Mr. Godfrey's soybeans appeared in a gradient pattern with plants closest to Justice Family Farms' corn field showing more severe damage than those farther away.

15. Complainant's inspector determined that Justice Family Farms contracted with Southern States - Hertford Agronomy Center, Hertford, North Carolina, to apply Roundup PowerMax (glyphosate), EPA Reg. No. 524-549, herbicide, Class III, Caution; and Status Herbicide (diflufenzopyr and dicamba), EPA Reg. No. 7969-242, herbicide, Class III, Caution, to their corn field. This application was made on June 12, 2013, by Matthew T. Woodworth, working under the supervision of the Respondent.

16. Complainant's inspector collected the following samples:

PW-21 vegetation, Mr. Godfrey's soybean field  
PW-22 soil, Mr. Godfrey's soybean field  
PW-23 vegetation, Mr. Godfrey's soybean field  
PW-24 soil, Mr. Godfrey's soybean field  
PW-25 vegetation, target  
PW-26 soil, target  
PW-27 vegetation, Mr. Godfrey's corn field  
PW-28 soil, Mr. Godfrey's corn field

17. Laboratory analysis of sample PW-26 revealed the presence of diflufenzopyr and dicamba.

Laboratory analysis of sample PW-27 revealed the presence of 2,4-D.

18. Physical and photographic evidence indicates the damage to Mr. Godfrey's soybeans came from Southern States - Hertford Agronomy Center's application of Status Herbicide.

19. The registered label for Status Herbicide contains the following language:

Spray Drift Management  
DO NOT spray when conditions favor drift beyond area intended for application.

20. As a result of these investigations, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

21. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

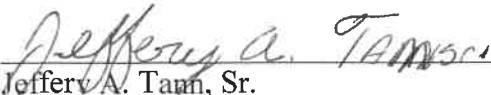
22. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 22(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 22(c) of this Agreement.

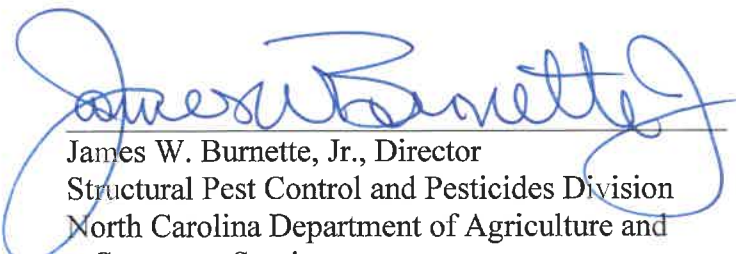


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Jeffery A. Tamm, Sr.  
Southern States - Hertford Agronomy Center  
P.O. Box 645  
Hertford, NC 27944

10-27-2014  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

10/29/2014  
Date

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of November, 2014

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



IR2013-021  
IR2013-050

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Jeffery A. Tann, Sr.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Jeffery A. Tann, Sr., Respondent  
Patrick N. Farquhar, Eastern Field Manager  
Dwight Seal, Western Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-56

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
HOYT M. HADDOCK, SR., )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Hoyt M. Haddock, Sr., Respondent.

1. At all times pertinent to this matter, Respondent resided in Greenville, North Carolina.
2. The Respondent retired from employment with the State of North Carolina in 2002. He had been employed as an inspector by the North Carolina Department of Agriculture & Consumer Services, Pesticide Section.
3. On July 18, 2013, the Pesticide Section scheduled pesticide license examinations at Caldwell Community College in Hudson, Caldwell County, North Carolina. The examinations were given by the Complainant's inspector.
4. The Respondent arrived at the examination site and completed an examination appointment sheet with the name "Hoyt Haddock." He indicated the Core Exam at \$50.00, and the Agricultural Pest Control-Plant exam at \$20.00.
5. The Respondent paid the examination fee with check, no. 1602, for seventy dollars drawn on an account in the name of "Latashia M. Haddock."
6. A LEXIS public record search done on July 23, 2013, showed that a record of marriage for Hoyt M. Haddock, Jr., and Latashia Monique Gatlin had been recorded in Pitt County on April 28, 2007.
7. Complainant's inspector recognized the Respondent as Hoyt Haddock, a retired pesticide

inspector, from having seen him at a retirement party given in honor of retired pesticide inspector Chip Bristow at the North Carolina Structural Pest Control and Pesticides Division in 2012.

8. Complainant's inspector approached the Respondent and asked him if he was Hoyt Haddock, who had retired from employment with the Pesticide Section as a pesticide inspector. The Respondent answered that he was Hoyt Haddock's son, Hoyt Jr.

9. After the Respondent left the examination site, Complainant's inspector reviewed the Respondent's forms and noticed that the Respondent completed the gold application sheet with the name "Hoyt M. Haddock, Jr.," and signed it, "Hoyt M. Haddock, Jr." Respondent also completed his answer sheets with the name "Hoyt Haddock, Jr."

10. The Respondent provided North Carolina driver's license number "8328303" on the gold application sheet. A LEXIS public record search done on July 23, 2013, showed that the North Carolina Department of Motor Vehicles issued driver's license no. 8328303 to Hoyt M. Haddock, Jr., 5310 US Highway 264 East, Greenville, Pitt County, North Carolina, date of birth: November 1973.

11. Complainant's Eastern District Manager e-mailed a photograph of the Respondent to Complainant's inspector and the inspector positively identified the man in the e-mailed photograph as the man who took the pesticide license examinations.

12. On July 24, 2013, Complainant's Eastern District Manager and inspector met with the Respondent at his residence.

13. The Respondent stated that he had taken the pesticide license exams for his son on July 18, 2013, at Caldwell Community College in Hudson, North Carolina. He said his son did not know he was taking the exams for him.

14. On July 25, 2013, Complainant's Eastern District Manager contacted Hoyt Haddock, Jr. Mr. Haddock, Jr., stated that he did not know anything about his father taking the exams until his father contacted him on July 24, 2013.

15. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-456(a)(5), (9) and (11)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (9) Used fraud or misrepresentation, or presented false information, in making an application for a license or renewal of a license;

- (11) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person.

16. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

17. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of two thousand one hundred dollars (\$2,100.00) to the North Carolina Department of Agriculture and Consumer Services in forty two (42) equal installments at 30-day intervals. The first payment of fifty dollars (\$50.00) shall be due and payable on the thirtieth day after the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of two thousand one hundred dollars (\$2,100.00) as outlined in paragraph 17(a) of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of two thousand one hundred dollars (\$2,100.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 17(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 17(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Hoyt M. Haddock, Sr.  
Hoyt M. Haddock, Sr.  
5387 US Highway 264  
Greenville, NC 27834

10-7-14  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

10/22/2014  
Date

Barry H. Bloch  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

10/9/14  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of November, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:

Paul L. ...  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Haddock, Hoyt

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement with discussion.

Settlement conference was held with Barry Bloch.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-61

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
STUART RICKS, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Stuart Ricks, Respondent.

1. At all times pertinent to this matter, Respondent resided in Pantego, Beaufort County, North Carolina.
2. On July 25, 2013, Complainant's inspector performed a routine inspection at Crop Production Services, Inc., 2222 Railroad Bed Road, Pantego, North Carolina, and discovered evidence that Crop Production Services sold restricted use pesticides to a non-certified applicator.
3. During the inspection, Complainant's inspector reviewed sales records and determined that the Respondent purchased 17.5 gallons of Atrazine 4L Herbicide (atrazine), EPA Reg. No. 34704-69, triazine herbicide, Class III, Caution, on May 24, 2013; and two gallons of Tombstone Helios Insecticide (cyfluthrin), EPA Reg. No. 34704-978, pyrethroid insecticide, Class II, Warning, on June 6, 2013.
4. On July 29, 2013, Complainant's inspector met with the Respondent. The Respondent stated that he had applied the Atrazine 4L Herbicide he purchased from Crop Production Services to his farm. He said Larry M. Lee of Lee Flying Service applied the Tombstone Helios Insecticide he purchased from Crop Production Services.
5. The Pesticide Section's records reflect that the Respondent was not certified as an applicator when he applied Atrazine 4L Herbicide to his farm.



6. The Respondent became certified as an applicator on August 22, 2013.
7. The registered label for Atrazine 4L Herbicide contains the following language:

RESTRICTED USE PESTICIDE

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:  
(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (15)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be


assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.


10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

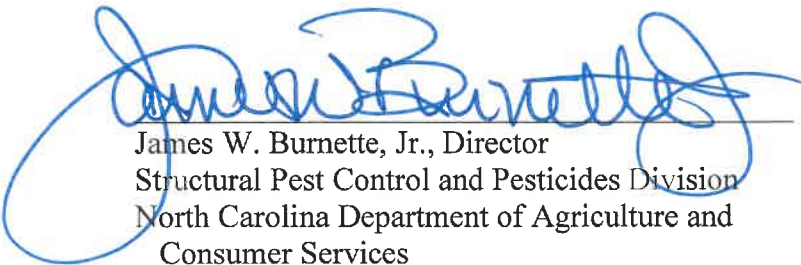
- (a) That Respondent agrees to pay the sum of five hundred dollars (\$500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of five hundred dollars (\$500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of five hundred dollars (\$500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(d) of this Agreement.

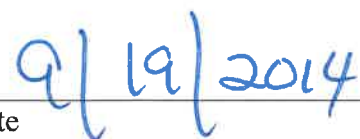
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Stuart Ricks  
65 Maple Street  
Pantego, NC 27860

  
\_\_\_\_\_  
Date 9/5/14

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

  
\_\_\_\_\_  
Date 9/19/2014

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

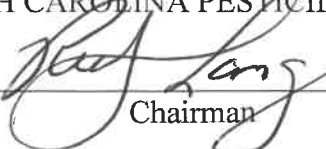
  
\_\_\_\_\_  
Date 9/11/14

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APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of November, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Stuart Ricks,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Stuart Ricks, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-61

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

DOUGLAS A. BLACK,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Douglas A. Black, Respondent.

1. At all times pertinent to this matter, Respondent was employed by Crop Production Services, Inc., 2222 Railroad Bed Road, Pantego, Beaufort County, North Carolina, and held Pesticide Dealer License No. 3736.

2. On July 25, 2013, Complainant's inspector performed a routine inspection at Crop Production Services, Inc., 2222 Railroad Bed Road, Pantego, North Carolina.

3. During the inspection, Complainant's inspector reviewed sales records and discovered evidence that Crop Production Services sold restricted use pesticides to a non-certified applicator.

4. Complainant's inspector determined that the Respondent sold Stuart Ricks 17.5 gallons of Atrazine 4L Herbicide (atrazine), EPA Reg. No. 34704-69, triazine herbicide, Class III, Caution, on May 24, 2013; and two gallons of Tombstone Helios Insecticide (cyfluthrin), EPA Reg. No. 34704-978, pyrethroid insecticide, Class II, Warning, on June 6, 2013. Crop Production Services' sales records showed the private certification number issued to Cedric W. Black.

5. The Pesticide Section's records reflect that at the time of these sales, Stuart Ricks was not certified as an applicator.

6. On July 29, 2013, Complainant's inspector met with Cedric Black. Cedric Black stated that he did not authorize Crop Production Services to utilize his private certification for the sales of restricted use pesticides to Stuart Ricks.

7. The registered labels for Atrazine 4L Herbicide and Tombstone Helios Insecticide contain the following language:

RESTRICTED USE PESTICIDE

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-451(a)(3) and (13)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 N.C. Admin. Code 9L .1302---

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Douglas A. Black  
Douglas A. Black  
Crop Production Services, Inc.  
2222 Railroad Bed Road  
Pantego, NC 27860

9/10/14  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

9/15/2014  
Date

Barry H. Bloch  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

9/16/14  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of November, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:

Paul Longley  
Chairman





NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,  
**Complainant,**

v.

Douglas A. Black,  
**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Douglas A. Black, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

ALBERT E. DELLINGER,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD

File No. IR2013-73

IR2013-81

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement, or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Albert E. Dellinger, Respondent.

1. At all times pertinent to these matters, Respondent held Private Certification No. 79470.

CI No. 2013-73

2. On July 23, 2013, Complainant's inspectors investigated a citizen inquiry by Larry G. Cagle, Jr., WoodMill Winery, 1506 John Beam Road, Vale, Lincoln County, North Carolina, regarding possible herbicide damage to his grapevines.

3. Complainant's inspectors met with Mr. Cagle at the vineyard. Mr. Cagle stated that on July 20, 2013, his neighbor, the Respondent, applied 2,4-D to his hay field and had applied glyphosate to the fence line that separates his fields from the vineyards. No significant damage was observed. Mr. Cagle said that he applies glyphosate to the rows of grapevines in his vineyard.

4. Complainant's inspectors contacted the Respondent. The Respondent stated that he had applied 2,4-D to his field directly across from Mr. Cagle's grapevines and glyphosate to the fence line.

IR2013-73

5. On September 3, 2013, Complainant's inspector investigated a complaint by Mr. Cagle. Mr. Cagle reported that pesticide applications made by the Respondent on July 20, 2013, and

August 31, 2013, may have damaged his grapevines.

6. Complainant's inspector went to WoodMill Winery and observed curling and twisting grapevine leaves.

7. Complainant's inspector met with the Respondent at his farm. The Respondent stated that on August 31, 2013, he had applied Defy Amine 4 (2,4-D), EPA Reg. No. 66222-221, herbicide, Class I, Danger; Dicamba DMA Salt (dicamba acid and dimethylamine salt), EPA Reg. No. 42750-40, herbicide, Class II, Warning; and Gly Star Plus (glyphosate), EPA Reg. No. 42750-61, herbicide, Class III, Caution.

8. Complainant's inspector collected the following samples:

- CJ-39 vegetation, Mr. Cagle's grapevines
- CJ-40 vegetation, Mr. Cagle's grapevines
- CJ-41 vegetation, Mr. Cagle's grapevines
- CJ-42 vegetation, Mr. Cagle's grapevines
- CJ-43 vegetation, Mr. Cagle's grapevines
- CJ-44 vegetation, target

9. Laboratory analysis of sample CJ-44 revealed the presence of 2,4-D and dicamba.

IR2013-81

10. On October 11, 2013, Complainant's inspector investigated a complaint by Mr. Cagle regarding possible pesticide damage to his young grapes.

11. Complainant's inspector met with Mr. Cagle at WoodMill Winery. Mr. Cagle stated that he noticed the damage on the grapevines the previous day and that the damage had just appeared in the past week. Complainant's inspector noted damage on the grapevines closest to the Respondent's property.

12. Complainant's inspector met with the Respondent's son in the vineyard. He stated that his father had not made any pesticide applications in the past six weeks.

13. Complainant's inspector collected the following samples:

- CJ-51 vegetation, Mr. Cagle's grapevines
- CJ-52 soil, Mr. Cagle's grapevines
- CJ-53 soil, Mr. Cagle's grapevines
- CJ-54 soil, target
- CJ-55 vegetation, target
- CJ-56 soil, target

14. Samples CJ-52 and CJ-53 revealed the presence of glyphosate and AMPA.  
Sample CJ-54 revealed the presence of glyphosate.  
Sample CJ-55 revealed the presence of 2,4-D and dicamba.

15. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed the case files, including the inspector's photographs. Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to Mr. Cagle's grapevines was caused by the drift of 2,4-D and dicamba.

16. The registered label for Defy Amine 4 contains the following language:

Do not apply under circumstances where spray drift may occur to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use, or consumption. Susceptible crops include but are not limited to cotton, okra, flowers, fruit trees, grapes (in growing stage) ...

The registered label for Dicamba DMA Salt contains the following language:

DICAMBA DMA SALT may cause injury to desirable trees and plants, particularly beans, cotton, flowers, fruit trees, grapes, ornamentals, peas, potatoes, soybeans, sunflowers, tobacco, tomatoes, and other broadleaf plants when contacting their roots, stems or foliage. These plants are most sensitive to DICAMBA DMA SALT during their development or growing stage.

17. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

18. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

19. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of seven hundred dollars (\$700.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of seven hundred dollars (\$700.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of seven hundred dollars (\$700.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 19(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 19(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Albert E. Dellinger  
Albert E. Dellinger  
1650 John Beam Road  
Vale, NC 28168

11-4-2014  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

11/12/2014  
Date

Barry H. Bloch  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

11/10/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of November, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:

Rufus L. Conley  
Chairman



IR2013-073  
IR2013-081

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Dellinger, Albert,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Albert Dellinger, Respondent  
Dwight E. Seal, Western Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-036D

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
 )  
Complainant, )  
 )  
v. )  
 )  
WEPAK CORPORATION, )  
 )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Wepak Corporation, Respondent.

1. Respondent has registered three products under a single EPA Registration No. with the Pesticides Section, Structural Pest Control & Pesticides Division, North Carolina Department of Agriculture & Consumer Services (the "Section"). That EPA Registration No is 010324-00157-00039272. The three products are Wepak Disinfectant Neutral Cleaner, Wepak Mint Disinfectant and Wepak Lemon Disinfectant. All three products contain the same active ingredients, Didecyl Dimethyl Ammonium Chloride, 1.268%, and n-Alkyl (C14, 50%; C12, 40%; C16, 10%) dimethyl benzyl ammonium chloride, 0.845%.

2. The North Carolina Pesticide Board (hereinafter "the Board") has received information tending to indicate that on March 24, 2014, the Section acquired samples of Wepak Disinfectant Neutral Cleaner, designated lab no. 14D09, and Wepak Mint Disinfectant, designated lab no. 14D08, batch no. 0314, and submitted these samples for testing by the NCDA&CS Food & Drug Protection Division Laboratory (the "laboratory").

3. That the Section provided the Board with the final test reports prepared by the laboratory, reflecting that:

a. Laboratory analysis on May 14, 2014, revealed that batch no. 0314, lab no. 14D09, Wepak Disinfectant Neutral Cleaner was contaminated with gram positive bacilli based upon 8 carriers with growth out of 60 total carriers;

b. Laboratory analysis on May 1, 2014, revealed that batch no. 0314, lab no. 14D08, Wepak Mint Disinfectant was adulterated in that it was ineffective against *P. aeruginosa* bacteria, based upon 23 carriers with growth out of sixty total carriers.



4. On May 13, 2014, the Board approved a settlement of Complainant's allegations, set forth in a Notice of Violation, that Wepak had produced and introduced into the market place a batch of the registered product, Wepak Lemon Disinfectant, EPA Reg. No. 10324-157-39272, EPA Est. No. 39272-NC-001, that was ineffective, in violation of the Pesticide Law of 1971.

5. On June 20, 2014, the Board summarily suspended No. 010324-00157-00039272 for Wepak Disinfectant Neutral Cleaner, Wepak Mint Disinfectant and Wepak Lemon Disinfectant.

6. Respondent has applied and received a new registration of a different formulation of the named products, Wepak Disinfectant Neutral Cleaner, Wepak Mint Disinfectant and Wepak Lemon Disinfectant. Defendant now reports that it believes it has found the source of contamination for the bacteria, the wash out drums, and has instituted the practice of changing them weekly. Respondent has also represented that it is considering installing a water filtration system to treat the water used in its products. Respondent has proposed to the Petitioner that it be permitted to produce a batch of the suspended product formulation for Wepak Disinfectant Neutral Cleaner, Wepak Mint Disinfectant and Wepak Lemon Disinfectant and have that batch tested. Any portion of the batch left over from testing would be stored in Respondent's warehouse. Respondent has proposed that it would test these products monthly if the Board lifted the suspension and restored the registration of the suspended formulation.

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(a)(5)---

(a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(5) Any pesticide which is adulterated or misbranded, (or any device which is misbranded).

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:


(a) That Respondent agrees to install a water filtration system by no later than December 15, 2014 and produce for testing purposes a batch of Wepak

Disinfectant Neutral Cleaner, Wepak Mint Disinfectant and Wepak Lemon Disinfectant with the formulation that was suspended by the Board, and to submit that batch for testing to a commercial accredited testing laboratory immediately after production. Respondent shall direct said laboratory to send a certified copy of the testing results to the Petitioner immediately upon completion of the testing;

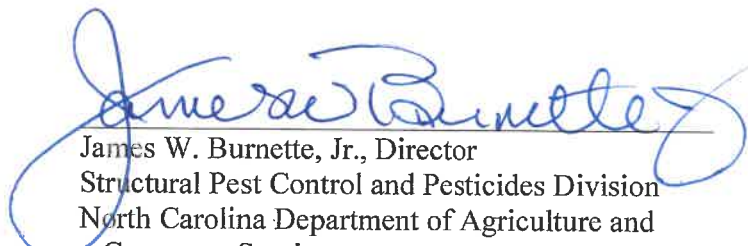
- (b) That Petitioner shall review the results and, if the results are negative for contamination and adulteration, and the testing methodology is credible, Petitioner shall recommend to the Board that it either lift the suspension and reinstate the product registration (and cancel the current product registration for the named products) or provide Respondent with a formal hearing within sixty days of the date the Petitioner reports the test results to the Board. Said hearing shall be conducted according to the Board's hearing rules and the provisions of Article 3, G.S. N.C. Gen. Stat. Ch. 150B, and Respondent shall have a right of appeal from the Board's final decision following a hearing pursuant to Article 4A, N.C. Gen. Stat. Ch. 150B;
- (c) That Respondent agrees that if the Board agrees to lift the suspension and reinstate the subject formulation either upon the Petitioner's recommendation or after a hearing before the Board, Respondent shall:
  - 1) continue the practice of changing the wash out drums weekly;
  - 2) test the reinstated products monthly for adulteration and contamination.
- (d) That Respondent acknowledges, should the Petitioner find that Respondent has failed to conduct the practices listed in paragraph 9(c), such finding shall constitute both grounds for summary suspension of the product registration and a violation of this Agreement, and that violation of this Agreement is grounds for the Board to impose a civil penalty against the Respondent pursuant to N.C. Gen. Stat. §§ 143-456(a)(5) and 143-469. Respondent also acknowledges his right to judicial review of this Agreement and waives said right by consenting to the terms of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

 Presided  
\_\_\_\_\_  
R. J. Poffenbarger  
Wepak Corporation  
P.O. Box 36803  
Charlotte, NC 28236

11-14-14  
\_\_\_\_\_  
Date

\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

1-9-2015  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

11/19/2014  
\_\_\_\_\_  
Date

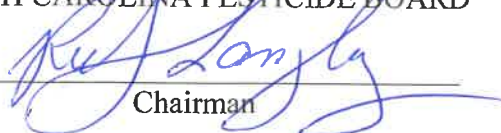
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APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of January, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:

\_\_\_\_\_  
Chairman

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-32

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

WILLIAM D. HALL,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and William D. Hall, Respondent.

1. At all times pertinent to this matter, Respondent was employed by Crabbe Aviation, 784 Foreman Bundy Road, Elizabeth City, North Carolina, and held Aerial Applicator (Pilot) License No. 785.

2. On April 13, 2012, Complainant's inspector investigated a complaint by Dean T. Demartino, 172 Shipyard Road in Camden, Camden County, North Carolina, regarding drift from an aerial application to the field adjacent to his residence.

3. Complainant's inspector met with Mr. Demartino at his residence. Mr. Demartino stated that on April 12, 2012, the field adjacent to his residence was sprayed by an airplane. After the application, Mr. Demartino smelled a strong pesticide odor and noticed spots on his truck.

4. Complainant's inspector contacted George C. Tarkington, the owner of the field adjacent to Mr. Demartino's residence. Mr. Tarkington stated that he contracted with Crabbe Aviation to aerially apply Baythroid XL ( $\beta$ -cyfluthrin), EPA Reg. No. 264-840, a synthetic pyrethroid insecticide, Class II, Warning, and Tilt Fungicide (propiconazole), EPA Reg. No. 100-617, a triazole fungicide, Class II, Warning, to his oats. He said the aerial application was made by the Respondent.

5. On April 16, 2012, Complainant's inspector met with the Respondent at Crabbe Aviation. The Respondent stated that on April 12, 2012, he aerially applied Baythroid XL and Tilt Fungicide to Mr. Tarkington's oat field adjacent to Mr. Demartino's residence.

6. Complainant's inspector collected samples including the following:

PS-02 swab, Mr. Demartino's vehicle  
PS-04 vegetation, 77 feet from Mr. Demartino's residence  
PS-05 vegetation, Shipyard Road right-of-way (north)  
PS-06 vegetation, Shipyard Road right-of-way (south)  
PS-07 vegetation, Shipyard Road right-of-way (northwest)  
PS-08 vegetation, Shipyard Road right-of-way (southeast)  
PS-09 vegetation, target

7. Laboratory analysis of samples PS-02, PS-05, PS-07, PS-08 and PS-09 revealed the presence of  $\beta$ -cyfluthrin and propiconazole.

8. Laboratory analysis of samples PS-04 and PS-06 revealed the presence of propiconazole.

9. During the investigation, Complainant's inspector determined that the Respondent allowed pesticides to drift and/or be deposited within 25 feet of Shipyard Road and within 100 feet of Mr. Demartino's residence.

10. The registered label for Baythroid XL contains the following language:

Do not apply when weather conditions favor drift from treated areas.  
Only apply this product if wind direction favors on-target deposition.

The registered label for Tilt Fungicide contains the following language:

To avoid spray drift, do not apply when weather conditions favor drift beyond the target area.

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;  
(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1005(c) and (e)---

- (c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance;
- (e) No pesticide shall be deposited within 100 feet of any residence.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---


- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

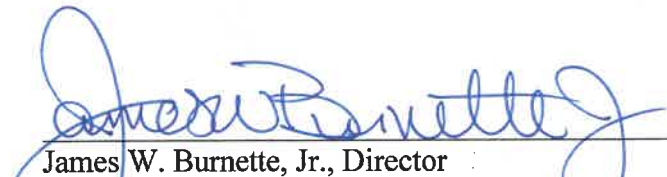
- (a) That Respondent agrees to pay the sum of one thousand two hundred dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand two hundred dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand two hundred dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
William D. Hall  
117 Hawkins Road  
Tabernacle, NJ 08088

6/23/2014  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

7/11/2014  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

7/10/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September, 2014

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman



IR2012-032

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

William D. Hall,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

William D. Hall, Respondent  
Patrick N. Farquhar, Eastern Field Manager



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-13

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

RICHARD W. CARTER,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Richard W. Carter, Respondent.

1. At all times pertinent to this matter, Respondent was the owner of Spring-Green Lawn Care, 5200 Wayne Memorial Drive, Goldsboro, Wayne County, North Carolina, and held Ground Applicator License No. 12930.
2. On February 15, 2013, the Pesticide Section received an anonymous complaint alleging that the Respondent had applied Regent 4SC (fipronil), EPA Reg. No. 7969-207, a fiprole insecticide, Class II, Warning, to residential lawns for fire ant control.
3. Regent 4SC is a restricted use pesticide labeled for in-furrow use on potatoes only.
4. On March 3, 2013, Complainant's inspector met with the Respondent at Spring-Green Lawn Care in Goldsboro, North Carolina, and performed a pesticide storage inspection.
5. During the inspection, the Complainant's inspector observed a container of Regent 4SC.
6. The Respondent stated that he had applied Regent 4SC for fire ant control as part of his landscaping business.
7. During the investigation, Complainant's inspector determined the Respondent failed to keep records of all applications of restricted use pesticides, failed to develop a prefire plan for his

storage facility and failed to request an annual inspection of his storage facility by the local fire department and/or emergency services office.

8. The registered label for Regent 4SC contains the following language:

RESTRICTED USE PESTICIDE

For in-furrow use on potatoes **ONLY**.

**DO NOT** use this product for termite or other general pest control.

9. Based on the results of our investigation, there is reason to believe that your acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (5) and (6)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection.

N.C. Gen. Stat. § 143-466(a)---

- (a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by rule. The records shall be kept for a period of three years from the date of the application of the pesticide to which the records refer, and shall be available for inspection and copying by the Board or its agents at its request.

02 N.C. Admin. Code 9L .1402---

All licensed pesticide applicators, as defined in G.S. 143-460 which includes public operators, utilizing ground equipment shall keep for three years and make

available to the commissioner for like period records of all application of restricted use pesticides showing the following:

- (1) name of licensed pesticide applicator or licensed public operator;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or site(s) treated with pesticide(s);
- (4) name of crop, commodity, or object(s) which was treated with pesticide(s);
- (5) approximate number of acres or size or number of other object(s) treated;
- (6) the year, month, date and specific time of day when each pesticide application was completed and each day of application shall be recorded as a separate record;
- (7) the brand name of the pesticide(s) and EPA registration number(s);
- (8) amount (volume or weight) of pesticide formulation(s) or active ingredient(s) applied per unit of measure;
- (9) name(s) of person(s) applying pesticide(s).

02 N.C. Admin. Code 9L .1905(f)(2)---

(f) The person responsible for each pesticide storage facility shall also be responsible for the following:

- (2) development of a prefire plan for the storage facility. Such plan shall be a description of the facility's plans and procedures for management of fires involving pesticides. A suggested prefire plan format is the publication, "Pre-Planning and Guidelines for Handling Agricultural Fires," reprinted by the National Agricultural Chemicals Association:
  - (A) one copy of the plan approved by the fire department and/or emergency services office having jurisdiction shall be maintained in the office of the storage facility for inspection by the Board;
  - (B) one copy of the plan shall be filed with the fire department and/or emergency services office having jurisdiction;
  - (C) a request shall be made in writing to the local fire department and/or emergency services office having jurisdiction for no less than an annual inspection of the facility.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a

violation of any provision of this Article or any rule adopted pursuant to this Article.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand six hundred dollars (\$1,600.00) to the North Carolina Department of Agriculture and Consumer Services in four (4) equal installments at 30-day intervals. The first payment of four hundred dollars (\$400.00) shall be due and payable on the thirtieth day after the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand six hundred dollars (\$1,600.00) as outlined in paragraph 11(a) of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand six hundred dollars (\$1,600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Richard W. Carter

Richard W. Carter  
Spring-Green Lawn Care  
5200 Wayne Memorial Drive  
Goldsboro, NC 27534

6-24-14

Date

James W. Burnette, Jr.

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

7-11-2014

Date

Barry H. Bloch

Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

6/25/14

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY: [Signature]

Chairman



IR2013-013

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Richard W. Carter,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Richard W. Carter, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-63

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

RUSSELL H. HARRELL, II,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Russell H. Harrell, II, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 82287.
2. On June 27, 2012 Complainant's inspector investigated a complaint by Lazarus Anthony, Jr., 1320 County Line Road, Hobgood, Martin County, North Carolina, regarding damage to his fruit trees.
3. Complainant's inspector met with Mr. Anthony at his residence. Two cotton fields border Mr. Anthony's property. One is farmed by Russell H. Harrell and the other by Timothy R. Braddy.
4. Mr. Anthony stated that the previous week he observed Mr. Harrell's son spray their cotton field adjacent to his property. He said the wind was blowing toward his property at the time of the application. He first noticed the damage to his fruit trees and grass the next day.
5. Complainant's inspector noted damage to Mr. Anthony's grass, trees and weeds closest to Mr. Harrell's cotton field.
6. Complainant's inspector then met with Mr. Braddy and his son, Samuel R. Braddy. Samuel R. Braddy stated that on June 6, 2012 he had applied Liberty (glufosinate-ammonium), EPA Reg. No. 264-829, a herbicide, Class II, Warning, to their cotton.

7. Complainant's inspector then met with Mr. Harrell and his son, the Respondent. The Respondent stated that on June 18, 2012 he had applied Ignite (glufosinate-ammonium), EPA Reg. No. 264-829, a herbicide, Class II, Warning, to their cotton.

8. Complainant's inspector collected samples including the following:

PW-31 vegetation, Lazarus Anthony's pear tree, front yard  
PW-33 vegetation, Lazarus Anthony's pear tree, back yard  
PW-35 vegetation, target, Russell Harrell's cotton field  
PW-36 soil, target, Russell Harrell's cotton field  
PW-38 soil, target, Timothy Braddy's cotton field  
PW-40 soil, target, Timothy Braddy's cotton field

9. Laboratory analysis of these samples revealed the presence of glufosinate-ammonium.

10. Physical and photographic evidence indicates the damage came from the Respondent's application of Ignite.

11. The registered label for Ignite contains the following language:

**SPRAY DRIFT MANAGEMENT**

Spray drift may result in injury to non target crops or vegetation. To avoid spray drift, do not apply when wind speed is greater than 10MPH or during periods of temperature inversions. Do not apply when weather conditions, wind speed, or wind direction may cause spray drift to non-target areas. AVOIDING SPRAY DRIFT AT THE APPLICATION SITE IS THE RESPONSIBILITY OF THE APPLICATOR.

Sensitive Areas: The pesticide should only be applied when the potential for drift to adjacent sensitive areas (e.g., residential areas, bodies of water, known habitats for threatened or endangered species, non-target crops) is minimal (e.g., when wind is blowing away from the sensitive areas).

Do not apply under circumstances where possible drift to unprotected persons or to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use or consumption can occur.

12. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .



N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:
  - (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:
  - (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
  - (4) Operated in a faulty, careless, or negligent manner;
  - (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

- (d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of six hundred fifty dollars (\$650.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred fifty dollars (\$650.00) within thirty (30) days of the Board's approval of

this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred fifty dollars (\$650.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 14(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(c) of this Agreement.

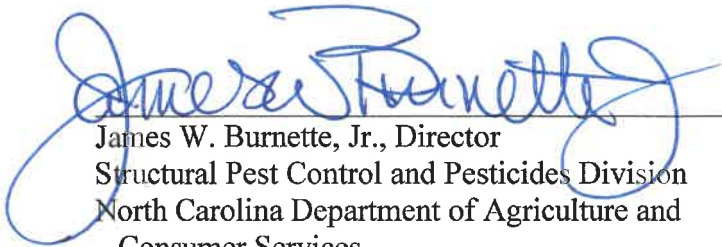
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Russell H. Harrell, II  
1372 NC Highway 11  
Oak City, NC 27857

May 14, 2014  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

19 May, 2014  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

21 May 2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September, 2014

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



2012-63

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Harrell, Russell H.

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement with discussion.

Settlement conference was held with Dwight Seal.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2012-86

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

DAVID P. HRUPSA & ATLANTIC AG )  
AVIATION, INC., )

Respondents.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and David P. Hruspa & Atlantic Ag Aviation, Inc., Respondents.

1. At all times pertinent to this matter, Respondent David P. Hruspa (hereinafter, "Respondent Hruspa") was president of Atlantic Ag Aviation, Inc., 510 Beech Bay Road in Roper, North Carolina, and Atlantic Ag Aviation, Inc., is a corporation incorporated in the State of Delaware, and a foreign corporation duly registered with the Secretary of State for the State of North Carolina.

2. At all times pertinent to this matter, Respondent Hruspa held Aerial Applicator (Pilot) License No. 594.

3. On September 4, 2012, Complainant's inspector investigated a complaint by Eric G. Elliott. Mr. Elliott reported that an aerial pesticide application to an adjacent soybean field damaged his cotton and vegetation at his mother's house located at 109 Railroad Bed Road in Roper, Washington County, North Carolina.

4. Complainant's inspector met with Mr. Elliott at the farm site located at his mother's house. Mr. Elliott stated that on August 30 or 31, 2012, a plane made a pass over Michael D. Harris' soybean field adjacent to his mother's house and his cotton field. He said the aerial applicator used smoke to determine the wind direction. The smoke from the plane drifted toward his mother's house and his cotton field. The aerial applicator sprayed the soybean field despite the wind direction.

5. Complainant's inspector observed damaged okra leaves in front of the farm shop and damaged vegetation in Mrs. Elliott's yard. He also observed damaged cotton along the entire length of the adjacent soybean field.
6. Complainant's inspector then met with Mr. Harris. Mr. Harris stated that he contracted with Respondent Hrupsa to aerially apply Defol 750 (sodium chlorate), EPA Reg. No. 19713-486, a non-selective herbicide used as a defoliant, desiccant and/or harvest aid, Class III, Caution, to his soybean field.
7. On September 6, 2012, Complainant's inspector met with Respondent Hrupsa at Atlantic Ag Aviation. Respondent Hrupsa stated that on August 30, 2012, he aerially applied Defol 750 to Mr. Harris' soybean field. He said that he went down one path and used smoke to determine the wind direction. When he saw the smoke going toward the Elliott's property, he left that whole pass off.
8. Complainant's inspector collected samples; however, the laboratory is unable to analyze for Defol 750.
9. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed photographs in the case file. Based upon the photographs, Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to the non-target plants (cotton, apple, pecan, okra, and a shrub) was caused by the aerial application of Defol 750 by Respondent Hrupsa to soybeans owned by Mike Harris.
10. During the investigation, Complainant's inspector determined that the shrub identified by Dr. Wade (sample PW-60) is 57 feet 6 inches from Mrs. Elliott's house.
11. The registered label for Defol 750 contains the following label language:

ENVIRONMENTAL HAZARDS

Do not apply when weather conditions favor drift from areas treated.

12. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:
  - (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 N.C. Admin. Code 9L .1003---

No person shall apply a pesticide(s) aerially under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

02 N.C. Admin. Code 9L .1005(e) and (f)---

- (e) No pesticide shall be deposited within 100 feet of any residence;
- (f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

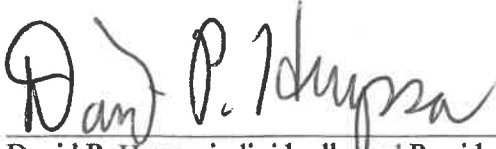
- (a) That Respondents agree to pay the sum of one thousand four hundred dollars (\$1,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondents deny they are guilty of any willful violation of the North Carolina Pesticide Law or Regulations and their consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondents acknowledge their right to a formal hearing to resolve this matter and waive said right by consenting to the terms of this Agreement;
- (d) That Respondents agree that if they fail to pay the total agreed upon sum of one thousand four hundred dollars (\$1,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand four hundred dollars (\$1,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (e) That Respondents acknowledge their right to judicial review of the civil penalty assessment in paragraph 14(d) and waive said right by consenting to the terms of this Agreement. Respondents further agree that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(d) of this Agreement.



WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

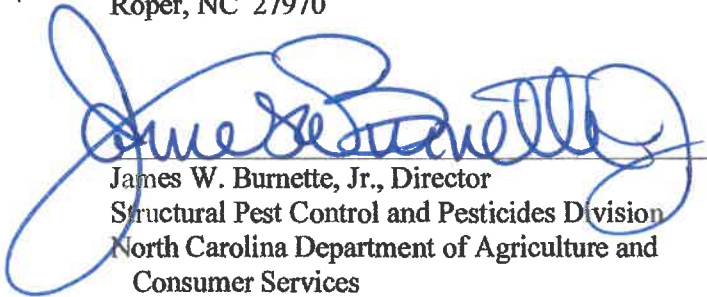
BY CONSENT:



David P. Hrupsa individually and President of  
Atlantic Ag Aviation, Inc.  
Atlantic Ag Aviation, Inc.  
510 Beech Bay Road  
Roper, NC 27970

08/25/14

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

8/26/2014

Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

9/8/2014

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

David P. Hrupsa,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

David P. Hrupsa, Respondent  
Patrick N. Farquhar, Eastern District Manager  
Barry H. Bloch, Assistant Attorney General

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-9

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

DAVID E. WHITEHURST,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and David E. Whitehurst, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 46318.
2. On March 15, 2013, Complainant's inspectors investigated a complaint by Brent F. Jackson, 10403 NC Highway 903 in Oak City, Martin County, North Carolina, regarding drift from a 2,4-D application to a wheat field surrounding his greenhouses that damaged tobacco seedlings in his greenhouses.
3. Complainant's inspectors met with Mr. Jackson at his greenhouses. Complainant's inspector examined the tobacco seedlings and observed symptoms consistent with herbicide injury: yellowing, twisting and curling leaves, and turgid leaves.
4. Mr. Jackson stated that he leases the land surrounding his greenhouses and nursery to Whitehurst Brothers Farms, Robersonville, North Carolina.
5. Mr. Jackson said that on March 10, 2013, at approximately 7:00 a.m., an employee of Whitehurst Brothers Farms sprayed 100 acres of wheat surrounding his greenhouses and nursery with a phenoxy herbicide and 30% nitrogen fertilizer mixture.
6. Mr. Jackson said that on March 12, 2013, he noticed the tobacco seedlings turning yellow in greenhouses number 4 and number 5. On March 13, 2013, he found dead tobacco seedlings in greenhouse number 4 and dying tobacco seedlings in greenhouse number 5.

7. On March 14, 2013, Matthew C. Vann, NC State University, Tobacco Extension Associate, inspected Mr. Jackson's greenhouses and collected samples.

8. On March 18, 2013, Mr. Jackson provided Complainant's inspector with a copy of his letter from Mr. Vann. In the letter, Mr. Vann states:

I visited the farm of Brent Jackson last Thursday, March 14, 2013, on the basis of an issue with his tobacco greenhouse operation. Based on my observation symptoms consistent with damage from Urea Ammonium Nitrate and phenoxy type herbicides were present from a drift event. In the two greenhouses I entered, damage was randomly observed throughout the entire growing system.

9. On March 18, 2013, Complainant's inspectors met with the Respondent and Larry G. Whitehurst at Whitehurst Brothers Farms. The Respondent stated that on March 10, 2013, Donald Smallwood, under his supervision, applied a mixture of Nufarm Weedone LV4 Solventless Broadleaf Herbicide (2,4-D), EPA Reg. No. 71368-14, a chlorinated phenoxy herbicide, Class III, Caution, and 30% nitrogen fertilizer to 100 acres of wheat surrounding Mr. Jackson's greenhouses and nursery. Mr. Smallwood sprayed within 70 feet to 80 feet of the greenhouses.

10. Complainant's inspector collected samples including the following:

JC-15 wheat, target

11. Laboratory analysis of this sample revealed the presence of 2,4-D.

12. The registered label for Nufarm Weedone LV4 Solventless Broadleaf Herbicide contains the following label language:

Do not use in or near a greenhouse.

Crops contacted by sprays or spray drift may be killed or suffer significant stand loss with extensive quality and yield reduction.

Do not apply under circumstances where spray drift may occur to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use or consumption. Susceptible crops include, but are not limited to, cotton, okra, flowers, grapes (in growing stage), fruit trees (foliage), soybeans (vegetative stage), ornamentals, sunflowers, tomatoes, beans, and other vegetables, or tobacco. Small amounts of spray drift that might not be visible may injure susceptible broadleaf plants.

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

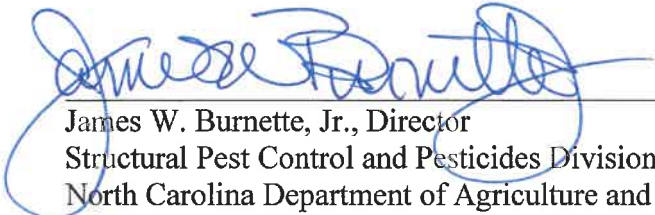
BY CONSENT:



David E. Whitehurst  
P.O. Box 355  
Robersonville, NC 27871

6-4-2014

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

6/5/2014

Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

6/12/2014

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

David E. Whitehurst,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Settlement was not negotiated



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-14

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
 )  
Complainant, )  
 )  
v. )  
 )  
DOUGLAS W. ROBERTSON, )  
 )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Douglas W. Robertson, Respondent.

1. At all times pertinent to this matter, Respondent was employed by Sevier Farmers Cooperative, 4082 Jonathan Creek Road in Waynesville, Haywood County, North Carolina, and held Pesticide Dealer License No. 3856. The Respondent is currently the owner of AgCare Products, Inc., 7 Debbie View Drive in Swannanoa, North Carolina.
2. On April 1, 2013, Complainant's inspector met with Crystal G. Greene and Frederick E. Shelton, licensed pesticide dealers for Sevier Farmers Cooperative, 4082 Jonathan Creek Road in Waynesville, North Carolina, to perform a routine inspection.
3. During the inspection, Complainant's inspector reviewed sales records and discovered evidence that Sevier Farmers Cooperative sold a restricted use pesticide to a non-certified applicator.
4. Complainant's inspector determined that on July 23, 2012, the Respondent sold William G. Carter a one gallon container of S-FenvaloStar Insecticide (esfenvalerate), EPA Reg. No. 71532-21-73006, a synthetic pyrethroid, Class II, Warning, and on August 13, 2012, Shannon Bumgarner sold Mr. Carter another one gallon container of the same product.
5. At the time of these sales, the Respondent was employed by Sevier Farmers Cooperative as its licensed pesticide dealer; Ms. Bumgarner was an employee working under the Respondent's supervision.
6. The Respondent left employment with Sevier Farmers Cooperative in December 2012.

7. Complainant's inspector further determined that the sales records failed to include all the required information for the sales of restricted use pesticides.

8. The Pesticide Section's records reflect that at the time of these sales, Mr. Carter was not certified as an applicator.

9. The registered label for S-FenvaloStar Insecticide contains the following language:

RESTRICTED USE PESTICIDE

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-450(b)---

(b) Each pesticide dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use or application of pesticides.

N.C. Gen. Stat. § 143-451(a)(3), (5) and (13)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

(13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 N.C. Admin. Code 9L .1302---

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural

pest control applicator or structural pest control licensee, any restricted use pesticide.

02 N.C. Admin. Code 9L .1305(3), (4) and (5)---

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (3) name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;
- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

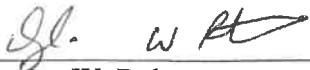
(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

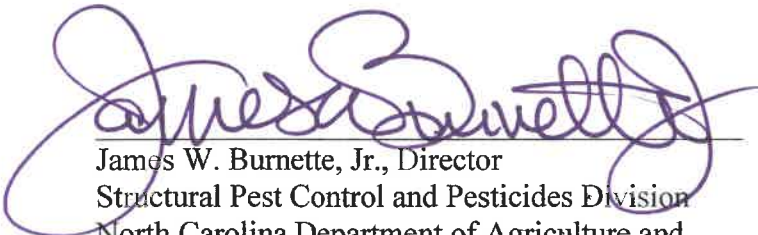
- (a) That Respondent agrees to pay the sum of one thousand four hundred dollars (\$1,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand four hundred dollars (\$1,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand four hundred dollars (\$1,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Douglas W. Robertson  
AgCare Products, Inc.  
7 Debbie View Drive  
Swannanoa, NC 28778

8/14/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

8/21/2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

8/19/14  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 5<sup>th</sup> day of September

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



2013-14

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Robertson, Douglas

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement with discussion.

Settlement conference was held with Dwight Seal.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD

File No. IR2013-20

IR2013-36

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

ERIC PEELER

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Eric Peeler, Respondent.

1. At all times pertinent to these matters, Respondent was employed by Southern States Cooperative, Inc., Statesville Crop Center, 2504 Davie Avenue, Statesville, North Carolina, and held Ground Applicator License No. 29339.

IR2013-20

2. On April 24, 2013, Complainant's inspector investigated a complaint by Jerry David Lentz, Mount Ulla, Rowan County, North Carolina, regarding damage to his wheat crop from a pesticide application to an adjacent field farmed by Ray Horton. Mr. Lentz reported that the application to Mr. Horton's field was made by Southern States Cooperative, Inc., in Statesville, North Carolina.

3. Complainant's inspector met with Mr. Lentz at his wheat field along Lyerly Road in Mount Ulla and observed yellowing of the leaf tips on Mr. Lentz's wheat.

4. Complainant's inspector then went to Southern States Cooperative in Statesville and obtained Mr. Horton's spray records. The records showed that on April 18, 2013, the Respondent applied Atrazine 4L Herbicide (atrazine), EPA Reg. No. 100-497-72693, a herbicide, Class III, Caution; Lambda-CY 1EC (lambda cyhalothrin), EPA Reg. No. 87290-24, an insecticide, Class II, Warning; and Gramoxone SL 2.0 (paraquat dichloride), EPA Reg. No. 100-1431, a herbicide, Class I, Danger/Poison, to Mr. Horton's corn field along Lyerly Road.

5. Complainant's inspector collected the following samples:

ST-24 vegetation, Mr. Lentz's wheat field, 75 feet from Lyerly Road  
ST-25 vegetation, Mr. Lentz's wheat field, 45 feet from Lyerly Road  
ST-26 vegetation, Mr. Lentz's wheat field, 12 feet from Lyerly Road  
ST-27 soil, target  
ST-28 vegetation, target

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6. Laboratory analysis of samples ST-24, ST-25 and ST-26 revealed the presence of atrazine.

Laboratory analysis of samples ST-27 and ST-28 revealed the presence of paraquat, lambda-cyhalothrin and atrazine.

7. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed the case file, including the inspector's photographs. Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to the wheat was caused by drift from the application made by Eric Peeler, Southern States, on April 18, 2013, to a field farmed by Ray Horton. The damage was more specifically caused by the paraquat dichloride, the active ingredient in Gramoxone SL 2.0 Herbicide.

8. The registered label for Gramoxone SL 2.0 contains the following language:

Drift: Gramoxone SL 2.0 is a contact herbicide that desiccates all green plant tissue. Paraquat dichloride is toxic to nontarget crops and plants if off-target movement occurs. Extreme care must be taken to ensure that off-target drift is minimized to the greatest extent possible. Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas. Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

IR2013-36

10. On June 11, 2013, Complainant's inspector investigated a complaint by Nicholas Slogick, Mocksville, Davie County, North Carolina, regarding a pre-emergence burndown application to his soybean fields by Southern States Cooperative, Inc., in Statesville, North Carolina, that caused his soybean plants to die.

11. Complainant's inspector met with Mr. Slogick at his soybean fields located along Junction Road and White Drive in Mocksville and observed dead and damaged soybean plants. Mr. Slogick stated that the pesticide application by Southern States was made on May 14, 2013. He said he planted his soybeans on May 16, 17 and 19, 2013.

12. On June 12, 2013, Complainant's inspector went to Southern States Cooperative in Statesville and obtained Mr. Slogick's spray records. The records showed that on May 14, 2013, the Respondent applied Envive (chlorimuron ethyl, flumioxazin and thifensulfuron methyl), EPA Reg. No. 352-756, a herbicide, Class III, Caution; and Gramoxone SL 2.0 (paraquat dichloride), EPA Reg. No. 100-1431, a herbicide, Class I, Danger/Poison, to Mr. Slogick's soybean fields.

13. Complainant's inspector also obtained spray records from May 13, 2013, that showed the Respondent applied GrazonNext HL (Acid Equivalents: aminopyralid and 2,4-D), EPA Reg. 62719-628, a herbicide, Class I, Danger, to James Hinson's pasture.

14. Complainant's inspector then contacted the Respondent. The Respondent stated that after spraying Mr. Hinson's pasture with GrazonNext HL, he rinsed his spray rig twice with water before spraying Mr. Slogick's soybean fields with Envive and Gramoxone SL 2.0.

15. Complainant's inspector collected the following samples:

- ST-42 soil, Mr. Slogick's soybean field
- ST-43 vegetation, Mr. Slogick's soybean field



ST-44 soil, Mr. Slogick's soybean field  
ST-45 vegetation, Mr. Slogick's soybean field

16. Laboratory analysis of sample ST-42 revealed the presence of paraquat, chlorimuron ethyl and flumioxazin.

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Laboratory analysis of sample ST-43 revealed the presence of paraquat, chlorimuron ethyl and aminopyralid.

Laboratory analysis of sample ST-44 revealed the presence of paraquat chlorimuron ethyl, flumioxazin and aminopyralid.

Laboratory analysis of sample ST-45 revealed the presence of paraquat and aminopyralid.

17. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed the case file, including the inspector's photographs. Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to Mr. Slogick's soybeans is characteristic of that caused by aminopyralid.

18. The registered label for GrazonNext HL contains the following label language:

**Sprayer Clean-Out Instructions**

It is recommended that separate spray equipment be used on highly sensitive crops such as tobacco, soybeans, peanuts, and tomatoes.

Do not use spray equipment used to apply GrazonNext HL for other applications to land planted to, or to be planted to, crops or desirable sensitive plants, unless it has been determined that all residues of this herbicide have been removed by thorough cleaning of equipment.

Equipment used to apply GrazonNext HL should be thoroughly cleaned before reusing to apply any other chemicals as follows.

1. Rinse and flush application equipment thoroughly after use. Dispose of rinse water away from water supplies.
2. Rinse a second time, adding 1 quart of household ammonia or tank cleaning agent for every 25 gallons of water. Circulate the solution through the entire system so that all internal surfaces are contacted (15 to 20 minutes). Let the solution stand for several hours, preferably overnight.
3. Flush the solution out of the spray tank through the boom.
4. Rinse the system twice with clean water, recirculating and draining each time.
5. Spray nozzles and screens should be removed and cleaned separately.

19. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:
  - (3) For any person to use any pesticide in a manner inconsistent with its labeling.

---

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:
  - (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
  - (4) Operated in a faulty, careless, or negligent manner;
  - (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

20. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

21. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand five hundred dollars (\$1,500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand five hundred dollars (\$1,500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand five hundred dollars (\$1,500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 21(c) and waives said right by consenting to the terms of

this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 21(c) of this Agreement.

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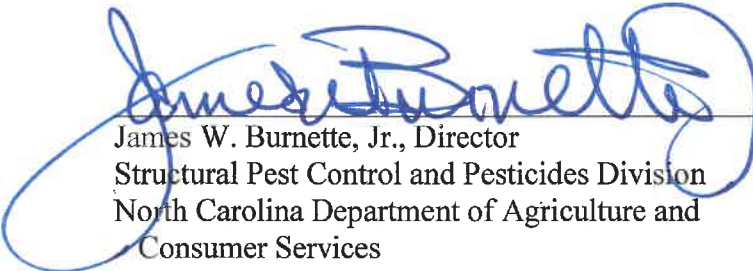
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

  
\_\_\_\_\_

Eric Peeier  
Southern States Cooperative, Inc.  
Statesville Crop Center  
2504 Davie Avenue  
Statesville, NC 28625

7-11-14  
Date

  
\_\_\_\_\_

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

7/14/2014  
Date

  
\_\_\_\_\_

Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

7/28/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Peeler, Eric

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

Settlement conference was not held.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File Nos. IR2013-18

IR2013-22

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

JOHN D. STONE, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and John D. Stone, Respondent.

1. At all times pertinent to these matters, Respondent was employed as the facility manager for Weeds No More, Inc., P.O. Box 236, Waltersburg, Pennsylvania.

2. On April 17, 2013, Complainant's inspector investigated a complaint by Glenda Morris, 6343 NC Highway 62 in Burlington, Alamance County, North Carolina, regarding runoff from a herbicide application at the AmeriGas location in Pleasant Grove, North Carolina, next to her property.

3. Complainant's inspector went to Ms. Morris' residence and observed dead vegetation on her property.

4. On April 18, 2013, Complainant's inspector met with Jeff Jarrett, dispatcher, at AmeriGas, 1729 Bethel Drive in High Point, North Carolina, and determined that AmeriGas contracted with Weeds No More, Inc, in Waltersburg, Pennsylvania, for weed control spraying at eight AmeriGas locations during 2013.

5. Mr. Jarrett provided service receipts from Weeds No More showing the following pesticide applications:

Pleasant Grove, North Carolina, on March 25, 2013

Reidsville, North Carolina, on March 25, 2013

Highpoint, North Carolina (1574 Bethel Drive), on March 26, 2013  
Highpoint, North Carolina (1729 Bethel Drive), on March 26, 2013  
Archdale, North Carolina, on March 26, 2013  
Mebane, North Carolina, on March 26, 2013  
Winston-Salem, North Carolina, on March 29, 2013

6. Complainant's inspector then contacted Weeds No More. Thomas R. Stewart, president, stated that Alligare SFM Extra (sulfometuron methyl), EPA Reg. No. 81927-5, pre-emergent and post-emergent herbicide, Class IV, Caution; Alligare Glyphosate 4 Plus (glyphosate), EPA Reg. No. 81927-9, nonselective, post-emergent herbicide, Class III, Caution; and Alligare Diruon 80DF (diuron), EPA Reg. No. 81927-12, substituted urea herbicide, Class III, Caution, had been applied at the AmeriGas sites.

7. That same date the Respondent contacted Complainant's inspector and stated that no one associated with Weeds No More was currently licensed to apply pesticides in North Carolina. A former employee was licensed to apply pesticides, but his license had lapsed on December 31, 2012.

8. The Respondent and Mr. Stewart are currently licensed to apply pesticides in North Carolina.

IR2013-22

9. On April 26, 2013, Complainant's inspector investigated a complaint by Charles N. Helgevold, 214 Phelps Road in Hillsborough, Orange County, North Carolina, regarding runoff from a pesticide application at the Carolane Propane Bulk Plant in Hillsborough, North Carolina, next to his and his neighbors' property.

10. Complainant's inspector went to Mr. Helgevold's residence and observed dead grass on several front yards along Phelps Road.

11. Complainant's inspector contacted Barry Faust, the manager of Carolane Propane in Hillsborough, North Carolina. Mr. Faust stated that on March 25, 2013, Weeds No More, Inc, in Waltersburg, Pennsylvania, applied Alligare Diuron 80DF (diuron), EPA Reg. No. 81927-12, substituted urea herbicide, Class III, Caution, and Alligare Glyphosate 4 Plus (glyphosate), EPA Reg. No. 81927-9, nonselective, post-emergent herbicide, Class III, Caution, at the Carolane Propane Bulk Plant.

12. Mr. Faust provided service receipts from Weeds No More showing the following pesticide applications:

Hillsborough, North Carolina (Phelps Road and Highway 86) on March 25, 2013  
Hillsborough, North Carolina (654 North Churton Street) on March 25, 2013

13. Complainant's inspector then contacted Weeds No More. Thomas R. Stewart, president, stated that no one associated with Weeds No More was currently licensed to apply pesticides in

North Carolina. A former employee was licensed to apply pesticides, but his license had lapsed on December 31, 2012.

14. Complainant's inspector collected samples including the following:

BD-5 vegetation, Charles Helgevold's property, 214 Phelps Road  
BD-6 soil, Billy Briley's property, 118 Phelps Road  
BD-7 vegetation, Billy Briley's property  
BD-8 soil, target

15. Laboratory analysis of samples BD-5, BD-6 and BD-7 revealed the presence of diuron.

Laboratory analysis of sample BD-8 revealed the presence of diuron, glyphosate and AMPA.

16. The Respondent and Mr. Stewart are currently licensed to apply pesticides in North Carolina.

17. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-452(a)---

(a) No person shall engage in the business of pesticide applicator within the State at any time unless he is licensed annually as a pesticide applicator by the Board.

N.C. Gen. Stat. § 143-456(a)(4), (5) and (15)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

02 N.C. Admin. Code 9L .0503(a)---

(a) The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.



18. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

19. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of eight hundred dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of eight hundred dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of eight hundred dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 19(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 19(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

John D. Stone

John D. Stone  
Weeds No More, Inc.  
P.O. Box 236  
Waltersburg, PA 15488

8/20/14  
Date

James W. Burnette, Jr.

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

9/9/2014  
Date

Barry H. Bloch

Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

9/8/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September, 2014

NORTH CAROLINA PESTICIDE BOARD

BY: [Signature]

Chairman



IR2013-18  
IR2013-22

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Stone, John D.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

John D. Stone, Respondent  
Dwight E. Seal, Western Field Manager

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

COUNTY OF WAKE

File No. IR2013-25

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

DONALD E. TURBEVILLE,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Donald E. Turbeville, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 11966.
2. On May 15, 2013, Complainant's inspector investigated a complaint by James H. Wilson, 5025 Braswell Road in Chadbourn, Columbus County, North Carolina. Mr. Wilson alleged that drift from a herbicide application at an adjacent field farmed by the Respondent damaged vegetation on his property.
3. Complainant's inspector met with Mr. Wilson at his residence and observed symptoms consistent with herbicide injury on several plants on his property.
4. On May 22, 2013, Complainant's inspector met with the Respondent. The Respondent stated that on May 11, 2013, he had applied Traxion Herbicide (glyphosate), EPA Reg. No. 100-1169, nonselective, post-emergent herbicide, Class III, Caution; and Valor Herbicide (flumioxazin), EPA Reg. No. 59639-99, N-phenylphthalimide pre-emergent herbicide, Class III, Caution, to the field adjacent to Mr. Wilson's property.
5. Complainant's inspector collected the following samples:  
  
DL-08 vegetation, Mr. Wilson's azalea shrub  
DL-09 soil, target

6. Laboratory analysis of sample DL-08 revealed the presence of glyphosate and flumioxazin.

Laboratory analysis of sample DL-09 revealed the presence of glyphosate, AMPA and flumioxazin.

7. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed the case file, including the inspector's photographs. Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to the plants was caused by Mr. Turbeville's herbicide application on May 11, 2013, to the field adjacent to Mr. Wilson's property and that the nature of the damage indicated it was caused by the flumioxazin, the active ingredient in Valor Herbicide.

8. The registered label for Traxion Herbicide contains the following language:

Do not allow the herbicide solution to mist, drip, drift, or splash onto desirable vegetation, since minute quantities of this product can cause severe damage or destruction to the crop, plants, or other areas on which treatment was not intended.

Severe damage or destruction may be caused by contact of Traxion to any vegetation (including leaves, green stems, exposed non-woody roots, or fruit) of crops, trees, and other desirable plants to which treatment is not intended, except as specified for glyphosate-tolerant crops.

The registered label for Valor contains the following language:

Do not apply when weather conditions favor drift from treated areas.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

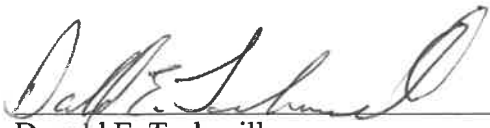
11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of six hundred dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

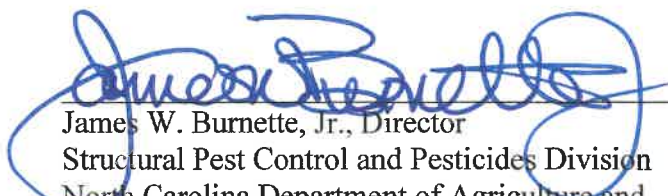
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Donald E. Turbeville  
6509 Andrew Jackson Highway  
Cerro Gordo, NC 28430

9-4-14  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

9/9/2014  
Date

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

9/8/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:  Chairman  




NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Donald E. Turbeville,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Donald E. Turbeville, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-23

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
DANNY K. MCDONALD, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Danny K. McDonald, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 81184.
2. On April 29, 2013, Complainant's inspector investigated a complaint by Wayne P. Farrar, Hammerstone Winery, Inc., 2010 Leaflet Church Road, in Lillington, Harnett County, North Carolina. Mr. Farrar alleged that drift from a 2,4-D application at an adjacent field damaged his grapes.
3. Mr. Farrar stated that he leases the adjacent field to the Respondent. Mr. Farrar said that he observed the Respondent making the pesticide application during windy conditions.
4. Complainant's inspector met with Mr. Farrar at his vineyard and observed curling and cupping leaves on the grapevines closest to the treated field. Mr. Farrar said that he first noticed the damage to his grapes, trees and shrubs on April 24, 2013.
5. Complainant's inspector then met with the Respondent at his farm. The Respondent stated that on April 9, 2013, he had applied Nufarm Weedone LV4 EC Broadleaf Herbicide (2,4-D ester), EPA Reg. No. 228-139-71368, chlorinated phenoxy herbicide, Class III, Caution, to the field adjacent to Hammerstone Winery.
6. Complainant's inspector collected the following samples:

DL-05 vegetation, Mr. Farrar's oak tree  
DL-06 vegetation, target  
DL-07 vegetation, target

7. Laboratory analysis of these samples did not detect the presence of 2,4-D.
8. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed the case file, including the inspector's photographs. Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to the grapes is consistent of that caused by 2,4-D.
9. The registered label for Nufarm Weedone LV4 EC Broadleaf Herbicide contains the following label language:

Do not apply under circumstances where spray drift may occur to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use or consumption. Susceptible crops include, but are not limited to, cotton, okra, flowers, grapes (in growing stage), fruit trees (foliage), soybeans (vegetative stage), ornamentals, sunflowers, tomatoes, beans, and other vegetables, or tobacco. Small amounts of spray drift that might not be visible may injure susceptible broadleaf plants.

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

- (b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:
  - (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:
  - (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
  - (4) Operated in a faulty, careless, or negligent manner;

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Danny K McDonald

Danny K. McDonald  
846 Raven Rock Road  
Lillington, NC 27546

8-25-14

Date

James W Burnette Jr

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

8/27/2014

Date

Barry H Bloch

Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

9/8/2014

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY: Pat L. Langley

Chairman



2013-023

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Danny K. MacDonald,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-29

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
 )  
Complainant, )  
 )  
v. )  
 )  
MITCH LANCASTER, )  
 )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Mitch Lancaster, Respondent.

1. At all times pertinent to this matter, Respondent was employed by The Mosquito Authority of Morrisville, North Carolina, 220 Gateway Center Boulevard, Suite 220, Morrisville, North Carolina, and held Ground Applicator License No. 31335.
2. On May 28, 2013, Complainant's inspector investigated a complaint by David Hammond, 603 Courthouse Drive in Morrisville, Wake County, North Carolina. Mr. Hammond reported that on May 24, 2013, The Mosquito Authority of Morrisville, North Carolina, applied an insecticide to his back yard. Mr. Hammond stated that he does not have a contract with The Mosquito Authority of Morrisville, and did not request The Mosquito Authority of Morrisville to apply pesticides to his property.
3. Complainant's inspector contacted the Respondent. The Respondent stated that Luke Mayo, a spray technician, applied the insecticide to the wrong property. The Respondent said that when Mr. Hammond contacted him he assured him that pesticides were not applied to his vegetable garden.
4. On May 29, 2013, Complainant's inspector met with Mr. Mayo at Mr. Hammond's residence. Mr. Mayo showed Complainant's inspector the areas he had sprayed on May 24, 2013.

5. Complainant's inspector determined that Mr. Mayo had sprayed Mr. Hammond's blackberry bushes that were producing fruit.

6. Mr. Mayo stated that he had applied Bifen I/T (insecticide/termiticide), EPA Reg. No. 53883-118, pyrethroid insecticide, miticide, Class III, Caution.

7. Complainant's inspector collected the following sample:

BD-9 vegetation, Mr. Hammond's blackberry bush

8. Laboratory analysis of the sample revealed the presence of bifenthrin.

9. The registered label for Bifen I/T contains the following label language:

General Applications Instructions

Bifen I/T controls a wide range of listed pests on flowers, foliage plants, non-bearing fruit and nut trees, shrubs, and ornamental trees, in interior and exterior plantscapes, such as those in hotels, office buildings, shopping malls, etc., and around athletic fields, homes, institutional buildings, parks, and recreational areas. Non-bearing fruit and nut trees are those that will not produce a harvestable crop during the season of application.

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:



N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand two hundred dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand two hundred dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand two hundred dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

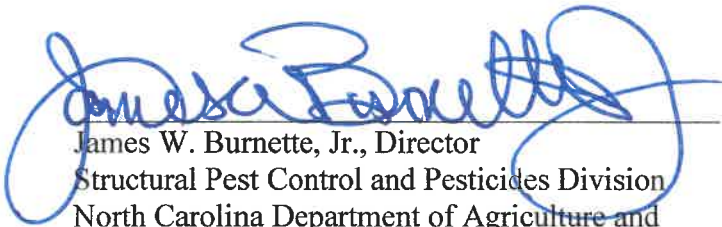
BY CONSENT:



Mitch Lancaster  
The Mosquito Authority of Morrisville  
2200 Gateway Center Blvd., Suite 220  
Morrisville, NC 27560

8-20-14

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

8/20/2014

Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

8/26/2014

Date

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APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Mitch Lancaster,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Settlement was not negotiated

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-48

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
)  
Complainant, )  
)  
v. )  
)  
JAMES C. BOYETTE, )  
)  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and James C. Boyette, Respondent.

1. At all times pertinent to this matter, Respondent resided in Hobgood, Halifax County, North Carolina.
2. On June 24, 2013, Complainant's inspector performed a routine inspection at Coastal AgroBusiness, Inc., 12011 NC Highway 125, Hamilton, North Carolina.
3. During the inspection, Complainant's inspector reviewed sales records and determined that the Respondent had purchased the following restricted use pesticides from Coastal AgroBusiness:

Date of Sale	Pesticide	Quantity
April 11, 2013	Telone C-17 Soil Fungicide and Nematicide (dichloropropene and chloropicrin), EPA Reg. No. 62719-12, preplant soil fumigant, Class I, Danger-Poison	110 gallons
April 12, 2013	Telone C-17 Soil Fungicide and Nematicide	550 gallons
May 16, 2013	Paraquat Concentrate (paraquat), EPA Reg. No. 82542-3, bipyridylium, contact, non-selective herbicide, Class I, Danger-Poison	40 gallons
May 17, 2013	Paraquat Concentrate	5 gallons
May 21, 2013	Gramoxone SL 2.0 Herbicide (paraquat), EPA Reg. No. 100-1431, bipyridylium, contact, non-selective herbicide, Class I, Danger-Poison	50 gallons
May 25, 2013	Paraquat Concentrate	35 gallons
June 7, 2013	Paraquat Concentrate	12.5 gallons

4. On June 24, 2013, Complainant's inspector met with the Respondent. The Respondent stated that he had applied all the restricted use pesticides he purchased from Coastal AgroBusiness to his crops.

5. The Pesticide Section's records reflect that the Respondent was not certified as an applicator when he applied the restricted use pesticides to his crops.

6. The Respondent became certified as an applicator on July 31, 2013.

7. The registered labels for Gramoxone SL 2.0 Herbicide, Paraquat Concentrate and Telone C-17 Soil Fungicide and Nematicide contain the following language:

RESTRICTED USE PESTICIDE

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4), (5) and (15)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

(15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---


(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

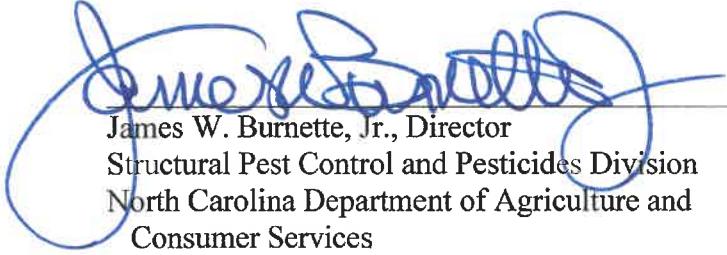
- (a) That Respondent agrees to pay the sum of one thousand dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
James C. Boyette  
10844 Highway 111 North  
Hobgood, NC 27843

8-19-14  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

8/21/2014  
Date

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

8/21/14  
Date

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APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

James C. Boyette,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Settlement was not negotiated



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-51

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

WESTON A. WATERS,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Weston A. Waters, Respondent.

1. At all times pertinent to this matter, Respondent was employed by Southern States, 1121 West Main, Belhaven, Beaufort County, North Carolina, and held Pesticide Dealer License No. 4173.
2. On July 2, 2013, Complainant's inspector performed a routine inspection at Southern States, 1121 West Main, Belhaven, North Carolina.
3. During the inspection, Complainant's inspector reviewed sales records and discovered evidence that Southern States sold a restricted use pesticide to a non-certified applicator.
4. Complainant's inspector determined that on June 28, 2013, the Respondent sold James P. Allen eight 2.5 gallon containers of Gramoxone SL 2.0 Herbicide (paraquat), EPA Reg. No. 100-1431, bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison. The restricted use pesticide sales record from Southern States showed an invalid license number and expiration date.
5. The Pesticide Section's records reflect that at the time of the sale, Mr. Allen was not certified as an applicator.
6. The registered label for Gramoxone SL 2.0 Herbicide contains the following language:

## RESTRICTED USE PESTICIDE

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-451(a)(3) and (13)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 N.C. Admin. Code 9L .1302---

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand five hundred dollars (\$1,500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand five hundred dollars (\$1,500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand five hundred dollars (\$1,500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Weston A. Waters  
Weston A. Waters  
Southern States  
P.O. Box 126  
Belhaven, NC 27810

8-26-14  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

9/8/2014  
Date

Barry H. Bloch  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

8/29/14  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September, 2014.

NORTH CAROLINA PESTICIDE BOARD

BY:

Ray L. Longley  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Weston A. Waters,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Weston A. Waters, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-55

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

THOMAS E. LOWE, JR.,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Thomas E. Lowe, Jr., Respondent.

1. At all times pertinent to this matter, Respondent was employed by Parkway Ag Center, Inc., 6006 Bear Grass Road, Williamston, Martin County, North Carolina, and held Pesticide Dealer License No. 3263.
2. On July 15, 2013, Complainant's inspector performed a routine inspection at Parkway Ag Center, Inc., 6006 Bear Grass Road, Williamston, North Carolina.
3. During the inspection, Complainant's inspector reviewed the sales records and discovered evidence that the Respondent failed to keep complete records of sales of restricted use pesticides.
4. Complainant's inspector determined that eleven Parkway Ag Center's invoices for cash sales of restricted use pesticides failed to show the following:
  - initials of sales clerk
  - name of certified or licensed applicator
  - certification or license number of certified or licensed applicator
  - certification or license expiration date as shown on the certified or licensed applicator's certification card
5. Parkway Ag Center's invoices for cash sales showed the following sales of restricted use pesticides:

Date of Sale	Pesticide	Quantity
March 31, 2012	Atrazine 4L Herbicide (atrazine), EPA Reg. No. 19713-11, triazine herbicide, Class III, Caution	2.5 gallons
March 31, 2012	Gramoxone Inteon Herbicide (paraquat), EPA Reg. No. 100-1217, bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison	2.5 gallons
April 30, 2012	Gramoxone Inteon Herbicide	2.5 gallons
April 30, 2012	Bicep II Magnum Herbicide (s-metolachlor and atrazine) EPA Reg. No. 100-817, chloroacetamide/triazine herbicide, Class III, Caution	2.5 gallons
May 10, 2012	Baythroid 2E Insecticide (cyfluthrin), EPA Reg. No. 3125-351, synthetic pyrethroid insecticide, Class II, Warning	.5 gallon
May 31, 2012	Baythroid XL Insecticide (cyfluthrin), EPA Reg. No. 264-840, synthetic pyrethroid insecticide, Class II, Warning	.5 gallons
June 20, 2012	Gramoxone SL Herbicide (paraquat), EPA Reg. No. 100-1217, bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison	10 gallons
July 31, 2012	Baythroid 2E Insecticide	.5 gallons
August 17, 2012	Asana XL Insecticide (esfenvalerate), EPA Reg. No. 352-515, pyrethroid insecticide, Class II, Warning	4 gallons
August 17, 2012	Gramoxone SL Herbicide	5 gallons
August 21, 2012	Asana XL Insecticide	14 gallons
August 31, 2012	Atrazine 4L Herbicide	2.5 gallons
May 24, 2013	Gramoxone SL Herbicide	2.5 gallons
June 14, 2013	Bifen AG Gold Insecticide/Miticide (bifenthrin), EPA Reg. No. 83222-1, synthetic pyrethroid insecticide, Class II, Warning	1 gallon

6. The Respondent stated that he could not determine if the cash sales were made to certified or licensed pesticide applicators.

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-451(a)(3), (5) and (6)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;
- (5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

- (6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection.

N.C. Gen. Stat. § 143-466(a)---

(a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by rule. The records shall be kept for a period of three years from the date of the application of the pesticide to which the records refer, and shall be available for inspection and copying by the Board or its agents at its request.

02 N.C. Admin. Code 9L .1305 (2), (3), (4) and (5)---

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (2) initials of sales clerk;
- (3) name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;
- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card.

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand five hundred dollars (\$1,500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;



- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand five hundred dollars (\$1,500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand five hundred dollars (\$1,500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.

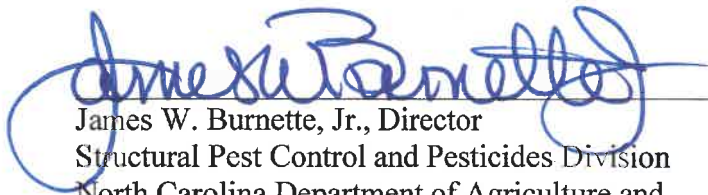
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Thomas E. Lowe, Jr.  
Parkway Ag Center, Inc.  
6006 Bear Grass Road  
Williamston, NC 27892

8-20-14  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

8/29/2014  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

9/8/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of September, 2014

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Thomas E. Lowe, Jr.,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File No. IR2013-5

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

BRIAN JENKINS, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Brian Jenkins, Respondent.

1. At all times pertinent to this matter, Respondent was employed as the warehouse manager for Harvey Fertilizer & Gas Company, 1307 Highway 258, Kinston, Lenoir County, North Carolina.

2. On February 5, 2013, Complainant's inspector investigated an anonymous complaint alleging that Joe Sholar of Sholar Farm Supply in Wallace, North Carolina, is selling restricted use pesticides without a pesticide dealer's license.

3. The Pesticide Section's records indicate that Mr. Sholar's license expired December 31, 2007, and that no one associated with Sholar Farm Supply is licensed as a pesticide dealer.

4. On February 7, 2013, Complainant's inspector met with Mr. Sholar at Sholar Farm Supply, 1440 Deep Bottom Road, Wallace, North Carolina. Mr. Sholar stated that all the restricted use pesticides at Sholar Farm Supply are shipped from the Harvey Fertilizer & Gas Company warehouse in Kinston, North Carolina.

5. On February 13, 2013, Complainant's inspector met with the Respondent at Harvey Fertilizer & Gas Company, 1307 Highway 258, Kinston, North Carolina. The Respondent stated that all the pesticides at Sholar Farm Supply are shipped from the Harvey Fertilizer & Gas Company warehouse in Kinston.

6. Inventory Transfer Out documents obtained from Harvey Fertilizer & Gas Company in Kinston showed shipments of the following restricted use pesticides to Sholar Farm Supply in 2012:

- Atrazine 4L (atrazine), EPA Reg. No. 66222-36, triazine herbicide, Class III, Caution
- Baythroid XL (cyfluthrin), EPA Reg. No. 264-840, synthetic pyrethroid insecticide, Class II, Warning
- Bicep II Magnum (s-metolachlor and atrazine), EPA Reg. No. 100-817, chloroacetamide/triazine herbicide, Class III, Caution
- Bifen IT (bifenthrin), EPA Reg. No. 66222-190, pyrethroid insecticide, Class II, Warning
- Diazinon AG 500 (diazinon), EPA Reg. No. 66222-9, organophosphate insecticide, Class III, Caution
- Fanfare (bifenthrin), EPA Reg. No. 66222-99, pyrethroid insecticide, Class II, Warning
- Gramoxone SL 2.0 Herbicide (paraquat dichloride), EPA Reg. No. 100-1431, bipyridylum herbicide, Class I, Danger-Poison
- Lannate SP (methomyl), EPA Reg. No. 352-342, carbamate insecticide, Class I, Danger-Poison
- Lannate LV (methomyl), EPA Reg. No. 352-384, carbamate insecticide, Class I, Danger-Poison

7. At the time of these shipments, no one was licensed as a pesticide dealer at Sholar Farm Supply.

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(5)---

(b) It shall be unlawful:

- (5) For any person to distribute, sell or offer for sale any restricted use pesticide to any dealer who does not hold a valid North Carolina Pesticide Dealer License.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---


(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

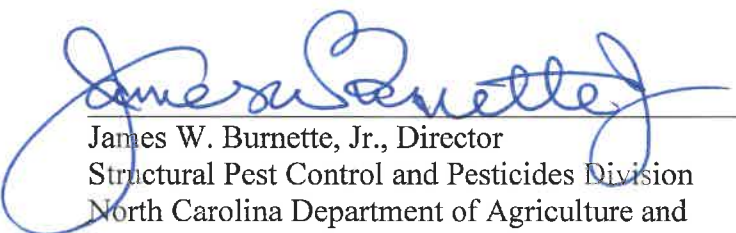
- (a) That Respondent agrees to pay the sum of four hundred dollars (\$400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of four hundred dollars (\$400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of four hundred dollars (\$400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

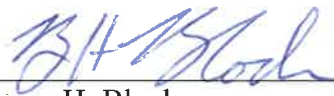
BY CONSENT:

  
\_\_\_\_\_  
Brian Jenkins  
Harvey Fertilizer & Gas Company  
P.O. Box 189  
Kinston, NC 28502

12/10/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

12/22/2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

12/18/14  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of January

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Brian Jenkins,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Linda Huggins, Harvey's Fertilizer & Gas Safety Director, for Respondent  
Patrick N. Farquhar, Eastern Field Manager



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-5

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
JOE C. SHOLAR, )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Joe C. Sholar, Respondent.

1. At all times pertinent to this matter, Respondent was employed by Sholar Farm Supply, 1440 Deep Bottom Road, Wallace, Duplin County, North Carolina.
2. On February 5, 2013, Complainant's inspector investigated an anonymous complaint alleging that the Respondent is selling restricted use pesticides without a pesticide dealer's license.
3. The Pesticide Section's records indicate that the Respondent's license expired December 31, 2007, and that no one associated with Sholar Farm Supply is licensed as a pesticide dealer.
4. On February 7, 2013, Complainant's inspector met with the Respondent at Sholar Farm Supply, 1440 Deep Bottom Road, Wallace, North Carolina. The Respondent stated that he was unaware his license had expired.
5. Sales invoices obtained from the Respondent for 2012 showed that 192 restricted use pesticide sales were made in 2012. The restricted use pesticides included the following:
  - Asana XL (esfenvalerate), EPA Reg. No. 352-515, pyrethroid insecticide, Class II, Warning
  - Atrazine 4L (atrazine), EPA Reg. No. 66222-36, triazine herbicide, Class III, Caution
  - Baythroid XL (cyfluthrin), EPA Reg. No. 264-840, synthetic pyrethroid insecticide, Class II, Warning

- Bicep II Magnum (s-metolachlor and atrazine), EPA Reg. No. 100-817, chloroacetamide/triazine herbicide, Class III, Caution
- Bifen IT (bifenthrin), EPA Reg. No. 66222-190, pyrethroid insecticide, Class II, Warning
- Diazinon AG 500 (diazinon), EPA Reg. No. 66222-9, organophosphate insecticide, Class III, Caution
- Endigo ZC (thiamethoxam), EPA Reg. No. 100-1276, neonicotinoid insecticide, Class II Warning
- Fanfare (bifenthrin), EPA Reg. No. 66222-99, pyrethroid insecticide, Class II, Warning
- Gramoxone SL 2.0 Herbicide (paraquat dichloride), EPA Reg. No. 100-1431, bipyridylum herbicide, Class I, Danger-Poison
- Harness Extra (acetochlor and atrazine), EPA Reg. No. 524-480, chloroacetamide/triazine herbicide, Class III, Caution
- Karate w/Zeon Technology (lambda cyhalothrin), EPA Reg. No. 100-1097, synthetic pyrethroid insecticide, Class II, Warning
- Lannate SP (methomyl), EPA Reg. No. 352-342, carbamate insecticide, Class I, Danger-Poison
- Permethrin 3.2 AG (permethrin), EPA Reg. No. 83222-3, pyrethroid insecticide, Class III, Caution

6. Complainant's inspector determined that seventeen invoices for restricted use pesticides contained incomplete information.

7. The Respondent said that all the restricted use pesticides at Sholar Farm Supply are shipped from Harvey Fertilizer & Gas Company, Kinston, North Carolina.

8. The Respondent is currently licensed as a pesticide dealer.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-448(a)---

(a) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this Part. A separate license and fee shall be obtained for each location or outlet from which restricted use pesticides are distributed, sold, held for sale, or offered for sale.

N.C. Gen. Stat. § 143-451(a)(3), (4) and (6)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

- (4) Failed to pay the original or renewal license fee when due, and continued to sell restricted use pesticides without paying the license fee, or sold restricted use pesticides without a license;
- (6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection.

N.C. Gen. Stat. § 143-466(a)---

(a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by rule. The records shall be kept for a period of three years from the date of the application of the pesticide to which the records refer, and shall be available for inspection and copying by the Board or its agents at its request.

02 N.C. Admin. Code 9L .1305 (2), (3), (4) and (5)---

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (2) initials of sales clerk;
- (3) name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;
- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

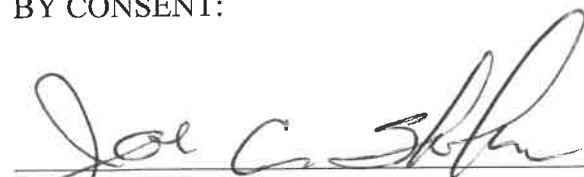
11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of two thousand five hundred dollars (\$2,500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;


- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of two thousand five hundred dollars (\$2,500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of two thousand five hundred dollars (\$2,500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Joe C. Sholar  
Sholar Farm Supply  
1440 Deep Bottom Road  
Wallace, NC 28466

12-19-14  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

1-2-2015  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

12/23/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of January

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Joe C. Sholar,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Linda Huggins, Harvey's Fertilizer & Gas Safety Director, for Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-33

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

ROBERT L. DAWSON,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Robert L. Dawson, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 71154.
2. On June 11, 2013, Complainant's inspector investigated a complaint by Phyllis Ballard, 2228 NC Highway 42 East in Wilson, Wilson County, North Carolina. Ms. Ballard alleged that drift from a pesticide application at an adjacent field damaged plants in her garden.
3. Complainant's inspector met with Ms. Ballard at her residence and observed damaged leaves on her corn plants in her garden. Ms. Ballard's garden is located approximately 30 to 40 feet from the Respondent's soybean field. Ms. Ballard stated that the soybean field was treated on or about May 31, 2013. She said she first noticed the damage to her property on or about June 3, 2013.
4. Complainant's inspector then met with the Respondent. The Respondent stated that on May 31, 2013, his employee, Carlos Campos, applied Gramoxone SL 2.0 Herbicide (paraquat dichloride), EPA Reg. No. 100-1431, bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison; and Envive (chlorimuron ethyl, flumioxazin and thifensulfuron methyl), EPA Reg. No. 352-756, preplant, preemergence herbicide, Class III, Caution, to the field adjacent to Ms. Ballard's property.
5. Complainant's inspector collected the following samples:

DL-34 vegetation, Ms. Ballard's corn  
DL-35 vegetation, target  
DL-36 soil, target

6. Laboratory analysis of sample DL-36 revealed the presence of chlorimuron ethyl, flumioxazin and paraquat.

7. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed the case file, including the inspector's photographs. Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to the corn was caused by the paraquat that was applied to a field farmed by Mr. Dawson.

8. The registered label for Gramoxone SL 2.0 contains the following language:

Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.



02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---


(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

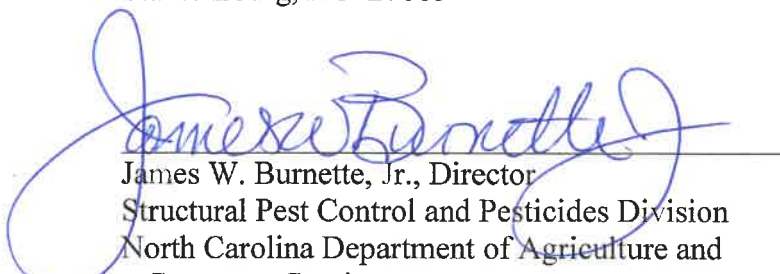
- (a) That Respondent agrees to pay the sum of six hundred fifty dollars (\$650.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred fifty dollars (\$650.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred fifty dollars (\$650.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Robert L. Dawson  
5902 Highway 58 North  
Stantonsburg, NC 27883

11-10-14  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

12-16-2014  
Date

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

12/2/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of January

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Robert L. Dawson,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Robert L. Dawson, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-44

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

DAVID F. ROWE,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and David F. Rowe, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 83351.
2. On June 19, 2013, Complainant's inspector investigated a complaint by Jacob E. Wegener, 260 Sandy Bend Road, Rocky Point, North Carolina, regarding exposure to pesticide containing rinsate.
3. Complainant's inspector met with Mr. Wegener and James K. Hamilton, II, at Mr. Wegener's residence. Mr. Wegener stated that he and Mr. Hamilton worked for the Respondent at Sonny Rowe Farm Market, 13538 Highway 210, Rocky Point, Pender County, North Carolina. He had worked for the Respondent for approximately three months; his last day of employment was June 18, 2013. Mr. Hamilton worked for the Respondent on June 6, 2013.
4. Mr. Wegener said that on June 6, 2013, he and Mr. Hamilton rinsed pesticide containers containing paraquat and containers containing an unknown yellow material. They were not given any personal protective equipment (PPE) to wear while rinsing the pesticide containers. He said that they rinsed approximately twelve to fifteen containers. Approximately sixty percent of the containers were paraquat containers. They were told by the Respondent to dump the rinsate on the ground, poke holes in the containers and haul them off to the trash.
5. Mr. Wegener wore leather shoes, sunglasses, short sleeve shirt and long pants while rinsing the containers. He suffered vomiting, dehydration, weakness and diarrhea after exposure to the rinsate.

6. Mr. Hamilton wore a short sleeve shirt, blue jeans, ball cap and boots. He suffered tingling and itching on his arms, legs and face after exposure to the rinsate.

7. Mr. Wegener further stated that on June 11 and 12, 2013, he rode on a tractor with the Respondent while the Respondent applied Gramoxone SL (paraquat dichloride), EPA Reg. No. 100-1217, a bipyridylium, contact, non-selective herbicide, Class I, Danger-Poison, on the strawberries. He said the Respondent did not give him any PPE to wear and that the Respondent did not wear PPE during the application. He asked for a respirator to wear on the second day, but was not given one. No soap or towels were available. He said the wind was blowing the chemical toward the tractor. He suffered vomiting and diarrhea after the first application.

8. Mr. Hamilton stated that he does not have a pesticide license and did not receive pesticide safety training. He was not aware of a poster or pesticide application records. He said PPE, a clean change of clothing and soap and towels were not provided and that emergency assistance procedures were not in place in case of a pesticide exposure incident.

9. On June 14, 2013, Mr. Wegener and Mr. Hamilton were seen at the New Hanover Emergency Department and diagnosed with paraquat poisoning.

10. On June 19, 2013, Complainant's inspector met with the Respondent. The Respondent stated that he employs harvesters and that the strawberry fields had been treated with pesticides within the past 30 days. He had not provided employees with Worker Protection Standard pesticide safety training. A Worker Protection Standard safety poster did not include the nearest emergency center. He did not maintain pesticide application records.

11. The Respondent said that Mr. Wegener and Mr. Hamilton only rinsed three Stealth containers and dumped the rinsate on the ground. He said none of the containers contained paraquat. He said Mr. Wegener had been employed for about a month. He did not provide Mr. Wegener PPE or Worker Protection Standard pesticide safety training.

12. Complainant's inspector collected the following samples:

PW-15	check swab
PW-16	swab, Mr. Hamilton's shoes
PW-17	Mr. Wegener's shoes
PW-18	soil, rinse area
PW-19	vegetation, strawberry field, target
PW-20	soil, strawberry field, target

13. Samples PW-19 and PW-20 revealed the presence of paraquat.

14. The label for Gramoxone SL contains the following language:  
AGRICULTURAL USE REQUIREMENTS  
Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170.

PRECAUTIONARY STATEMENTS  
HAZARDS TO HUMANS AND DOMESTIC ANIMALS

Wear a dust mist NIOSH-approved respirator with any N, R, P, or HE filter.

Personal Protective Equipment (PPE)

Applicators and other handlers (other than Mixers and Loaders) must wear:

- Long-sleeve shirt and long pants
- Shoes plus socks
- Protective eyewear
- A dust mist NIOSH-approved respirator with any N, R, P, or HE filter

#### DIRECTIONS FOR USE

##### RESTRICTED USE PESTICIDE

Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.

The label for Stealth contains the following language:

#### AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170.

#### PRECAUTIONARY STATEMENTS

##### HAZARDS TO HUMANS AND DOMESTIC ANIMALS

Personal Protective Equipment (PPE)

Applicators and other handlers must wear:

- Long-sleeved shirt and long pants

#### DIRECTIONS FOR USE

DO NOT apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.

15. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

- (b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:
- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1805---

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."

§ 170.122 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the location specified for the pesticide safety poster in § 170.135(d) and shall be accessible and legible, as specified in § 170.135(e) and (f).

(b) Timing.

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

§ 170.130 Pesticide safety training for workers.

(a) General requirement.

(1) Agricultural employer assurance. The agricultural employer shall assure that each worker, required by this section to be trained, has been trained according to this section during the last 5 years, counting from the end of the month in which the training was completed.

§ 170.135 Posted pesticide safety information.

(c) Emergency medical care information.

(1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster.

§ 170.210 Restrictions during applications.

(a) Contact with workers and other persons. The handler employer and the handler shall assure that no pesticide is applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handler.

§ 170.222 Providing specific information about applications.

When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the same location specified for the pesticide safety poster in § 170.235(d) of this part and shall be accessible and legible, as specified in § 170.235(e) and (f) of this part.

(b) Timing.

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any such handler's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until the handlers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

§ 170.230 Pesticide safety training for handlers.

(a) Requirement. Before any handler performs any handling task, the handler employer shall assure that the handler has been trained in accordance with this section during the last 5 years, counting from the end of the month in which the training was completed.



§ 170.235 Posted pesticide safety information.

(c) Emergency medical care information.

(1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster.

§ 170.250 Decontamination.

(a) Requirement. During any handling activity, the handler employer shall provide for handlers, in accordance with this section, decontamination supplies for washing off pesticides and pesticide residues.

(3) The handler employer shall provide soap and single-use towels in quantities sufficient to meet handlers' needs.

(4) The handler employer shall provide one clean change of clothing, such as coveralls, for use in an emergency.

16. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

17. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of one thousand five hundred dollars (\$1,500.00) to the North Carolina Department of Agriculture and Consumer Services in fifteen (15) equal installments at 30-day intervals. The first payment of one hundred dollars (\$100.00) shall be due and payable within thirty (30) days of the Board's approval of this Agreement;

(b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;

(c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

(d) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand five hundred dollars (\$1,500.00) as outlined in paragraph 17(a) of this Agreement, this Agreement will constitute a civil penalty assessment of the Board

of one thousand five hundred dollars (\$1,500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 17(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 17(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

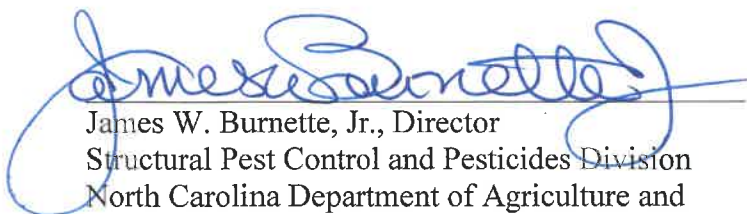
BY CONSENT:



David F. Rowe  
Sonny Rowe Farm Market  
13538 Highway 210  
Rocky Point, NC 28457

12-29-2014

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

1-8-2015

Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

1/2/2015

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED

this the 13<sup>th</sup> day of January

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

David F. Rowe,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

David F. Rowe, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File No. IR2013-72

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

JUSTIN M. BARKER,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Justin M. Barker, Respondent.

1. At all times pertinent to this matter, Respondent was employed as a field manager for Shatley Farms, West Jefferson, North Carolina, and held Private Certification No. 82882.

2. On August 29, 2013, Complainant's inspector investigated a complaint by Jerry L. Farrington, 435 Bare Road, West Jefferson, Ashe County, North Carolina, regarding a possible pesticide-related bee kill.

3. Complainant's inspector met with Mr. Farrington at his bee yard and noted a small amount of dead bees around the hives. Mr. Farrington stated that on August 28 and 29 he had observed pesticide applications being made to Christmas trees in the nearby area.

4. Critcher Farms is located 0.46 miles north of Mr. Farrington's property and Shatley Farms is located 0.55 miles south of Mr. Farrington's property.

5. Complainant's inspector contacted Critcher Farms and determined Dimethoate 4EC (dimethoate), EPA Reg. No. 19713-231, systemic insecticide, Class II, Warning; Asana XL (esfenvalerate), EPA Reg. No. 352-515, synthetic pyrethroid, Class II, Warning; and Sniper (bifenthrin), EPA Reg. No. 34704-858, synthetic pyrethroid, Class II, Warning, had been applied on August 28 and 29.

6. Complainant's inspector contacted Shately Farms and determined Dimethoate 4EC and Asana XL had been applied on August 28 and 29.

7. On September 3, 2013, Complainant's inspector met with James Bell, manager, at Critcher Farms and noted the lack of ground cover in the Christmas tree fields.

8. On September 3, 2013, Complainant's inspector met with the Respondent at Shatley Farms and noted blooming ground cover in the Christmas tree fields.

9. Complainant's inspector collected the following samples:

- CC-4 bees, Mr. Farrington's bee hives
- CC-5 soil, target, Critcher Farms
- CC-6 vegetation, target, Critcher Farms
- CC-7 soil, target, Shately Farms
- CC-8 vegetation, target, Shately Farms

10. Laboratory analysis of samples CC-4 and CC-8 revealed the presence of dimethoate.

Laboratory analysis of sample CC-5 revealed the presence of dimethoate and bifenthrin.

Laboratory analysis of sample CC-6 revealed the presence of dimethoate and esfenvalerate.

Laboratory analysis of sample CC-7 revealed the presence of bifenthrin.

11. The registered label for Dimethoate 4EC contains the following language:

This pesticide is highly toxic to bees exposed to direct treatment or residues on blooming crops or weeds. Do not apply this product or allow it to drift on blooming crops or weeds if bees are visiting the treatment area.

12. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---


(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

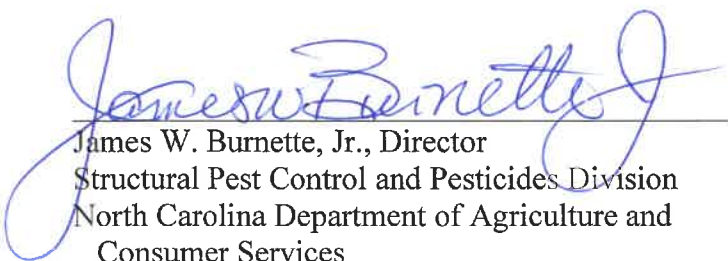
- (a) That Respondent agrees to pay the sum of seven hundred dollars (\$700.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of seven hundred dollars (\$700.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of seven hundred dollars (\$700.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 14(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Justin M. Barker  
Shatley Farms  
P.O. Box 697  
West Jefferson, NC 28694

11-12-14  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

12-16-2014  
Date

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

11/24/2014  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of January

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman





NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Barker, Justin M.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Elaine Mash for Justin M. Barker, Respondent  
Dwight E. Seal, Western District Manager.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-10

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
 )  
Complainant, )  
 )  
v. )  
 )  
RANDY D. RIGGS, )  
 )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Randy D. Riggs, Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 64654.
2. On Saturday March 16, 2013, the North Carolina Department of Agriculture & Consumer Services ("NCDA&CS") was notified about an incident in Duplin County involving a soil fumigant application that led residents to contact their local fire department in which four firefighters who responded had to seek medical treatment due to symptoms of fumigant exposure.
3. On Monday March 18, 2013, Complainant's inspector contacted Duplin County Emergency Management to determine exactly what happened. Mr. Reid Southerland, Director of Duplin County Emergency Management ("DCEM"), told Inspector Long that Jonathan Covington called the fire department at 5:53 a.m. on Friday March 15, 2013, and reported that a very strong smell was coming from inside of his home. When firefighters arrived on scene they noticed the strange odor and investigated the home but find nothing on fire. They also noticed the odor was stronger outside the house, coming from field across the road.
4. Mr. Covington told DCEM that the farmer had tractors in the field across the street from him home on March 14, 2013.
5. The DCEM firefighters at Mr. Covington's home began to experience burning eyes, difficulty breathing and feeling ill. DCEM told Mr. Covington to get his family and leave the

premises. DCEM personnel also left the premises. Four of DCEM's firefighters were evaluated by the local medical staff. The diagnosis was exposure to chloropicrin.

6. Mr. Southerland reported that there were no fumigation signs or postings in the field across from the Covington residence. Mr. Southerland contacted Mr. Bird, one of the firefighters, who believed the application to have made around noon time on March 14, 2013. Mr. Bird said that Jane Stevens and Jason Stevens, who lease out land near the field in question, reported having seen an applicator working the field in question.

7. Complainant's inspector contacted Jason Stevens who said that Daniel Kornegay leases the field in question. Mr. Stevens and his mother said the smell of the chloropicrin was very bad on March 14, 2013.

8. Complainant's inspector called Mr. Kornegay who stated that chloropicrin was applied to the field in question but declined at first to identify the applicator. He later told Complainant's inspector that the applicator was Mr. William Whaley and that Mr. Whaley applied the fumigant on the afternoon of March 13, 2013. Mr. Kornegay said that the problem was not in the application of the soil fumigants, but that the residents are not used to farming and the smells of farming. Mr. Kornegay claimed that chloropicrin is harmless and compared it to chicken litter in that it does not smell good when it is applied.

9. Complainant's inspector attempted to contact Mr. Covington numerous times and left his business card at Mr. Covington's home. Mr. Covington contacted Complainant's inspector on March 19, 2013, and stated that he was very concerned for his and his family's safety. Complainant's inspector referred Mr. Covington to Sheila Higgins, R.N., NCDHHS.

10. Mr. Covington told Complainant's inspector that his family started to smell a strange odor around 8 p.m. on March 14, 2013. Mr. Covington said that he has two children, an infant and a younger daughter, as well as his wife/girlfriend. He said that his daughter seemed to react the worst to the smell. He said her eyes were hurting her so badly he went to the drug store on March 14, 2013, to get her some eye drops. He said they were all able to get to bed. He said that when he awoke at 5:30 a.m. March 15, 2013, he found his daughter on the couch crying. She had not been able to sleep all night. He said the smell was very bad and his eyes were burning. He believed that plastic wires were burning in the house. He immediately got his family up and went outside. He said the smell was worse outside. He and his family were in their car and he called the fire department.

11. Complainant's inspector then called William Whaley by telephone. Complainant's inspector asked Mr. Whaley if he was farming the field in Duplin County where the incident occurred. Mr. Whaley admitted that he was and that he was farming over 1500 more acres. Mr. Whaley said that he is the largest tobacco grower in the state.

12. Complainant's inspector asked Mr. Whaley about the application of chloropicrin to the field across from the Covington home. Mr. Whaley said that he applied chloropicrin there on March 14, 2013. He stated the weather and soil conditions were perfect. He said that he and one other handler applied the chloropicrin with a chisel plow. He said he did not know exactly how large the field was but would have that information on his management plan. Mr. Whaley said he did not know what the big deal was and that chloropicrin was less harmful than chicken litter.

13. Complainant's inspector asked Mr. Whaley if he used a buffer zone and treated area signs in the fields where he applied chloropicrin. Mr. Whaley said that he did. He said that he nailed both signs on the same tobacco stick in the edge of the treated fields. Complainant's inspector told him that the buffer zone signs should be placed at the edge of the buffer zone at the entrances to the fields. Complainant's inspector also told him that the firefighters said that there were no signs in the field and that he did not see any signs in the field when he visited the Covington residence.

14. Complainant's inspector asked Mr. Whaley who the certified applicator was who was in charge of the chloropicrin application to the field near the Covington residence. Mr. Whaley said he was that certified applicator. Complainant's inspector informed him that his private applicator's certification expired in 2011 and he could not be the certified applicator in charge for that reason.

15. Complainant's inspector asked Mr. Whaley to meet with him to discuss the incident and go over Mr. Whaley's management plan, records and product label. Mr. Whaley said that he believes this investigation was "no big deal" and that the earliest he could meet with Complainant's inspector would be on Wednesday March 20, 2013, at 9 a.m.

16. Mr. Whaley asked what Complainant's inspector wanted to see during the meeting. Complainant's inspector told him that he needed to see two complete copies of the pesticide label, a complete fumigant management plan, the fumigant signs Mr. Whaley used, a copy of the training certificate, the application equipment used and the handler or handlers who were helping him. Mr. Whaley said he would have everything ready at 9 a.m. on Wednesday and that his equipment was parked at a field office at Riggs Brothers Farms in Pollocksville.

17. On Tuesday March 19, 2013, Complainant's inspector called Mr. Whaley to confirm their appointment for Wednesday morning. Mr. Whaley said that he had something come up and that he could not meet until Friday March 22, 2013.

18. On March 19, 2013, Complainant's inspector visited the two fields adjacent to the fields near the Covington residence and saw tobacco sticks without signs on them. Complainant's inspector looked in a nearby ditch and found signs that were turned over backwards in the ditch. He found no signs in the field across from the Covington residence where the complaint originated.

19. On Friday March 22, 2013, Complainant's inspector and Complainant's Eastern District Manager arrived at Riggs Brother Farms. Complainant's inspector and Eastern District Manager first met Rodney Riggs, who said that Mr. Whaley's office was in one of their buildings. Mr. Riggs then called Mr. Whaley who said he would be there in a few minutes. Mr. Whaley showed up at 9:45 a.m. Complainant's inspector and Eastern District Manager went into Mr. Whaley's office and asked him to describe what happened. Mr. Whaley said that he fumigates 1600 acres of tobacco and that he was not overly concerned about the incident.

20. Mr. Whaley said that they applied 5 gallons of the chloropicrin per acre. He said that he thought it was a perfect day to fumigate. Mr. Whaley stated that there was no way to make sure that the fumigant was coming out of the line and to make sure the orifice had not clogged. Mr. Whaley said that he and a fumigant handler, "Victor," opened the valve allowing the fumigant to

run out on the ground before he put the shanks in the ground. He said this would help keep the orifices from clogging.

21. Complainant's inspector requested copies of the pesticide label, the complete fumigant management plan, the fumigant signs Mr. Whaley used, and a copy of training certificate. Complainant's inspector asked to see the equipment used to apply the chloropicrin, and the handler(s) who helped him. Mr. Whaley retrieved a copy of his soil fumigant applicator training certificate from his vehicle.

22. Complainant's inspector again asked Mr. Whaley who the "certified applicator in charge" of the chloropicrin application was and Mr. Whaley answered that it was he. Mr. Whaley said that he and "Victor" did all of the fumigation. Complainant's inspector reminded Mr. Whaley that he could not be the "certified applicator in charge" because his private certification had expired in 2011. Mr. Whaley said that he was unaware that his private certification had expired because he and his wife had separated and she probably threw all of his mail in the trash.

23. Mr. Whaley provided Complainant's inspector and Eastern District Manager with an online fumigation certification. The certificate was dated March 18, 2013, four days after the chloropicrin application and incident at the Covington residence occurred. Complainant's inspector told Mr. Whaley that the certificate was not valid for two reasons:

- a) Mr. Whaley was not certified; and
- b) The certification was issued days after the fumigation occurred.

24. Complainant's inspector asked Mr. Whaley whether he farms with his son who is currently certified. Mr. Whaley answered that they do not farm together.

25. Complainant's inspector asked Mr. Whaley for the rest of the information he had requested earlier in the week. Mr. Whaley made a phone call and replied that the fumigant management plan was not finished and that he sent the chloropicrin cylinders back to the supplier. Mr. Whaley then said he did not have any signs with him.

26. Mr. Whaley said that his handler was Victor Manuel Tequextle. Complainant's inspector interviewed Mr. Tequextle who said that he was an H2A worker and has seen the WPS video. He also said that he had seen the fumigant handler fact sheet.

27. Complainant's inspector asked Mr. Tequextle for his medical clearance and respirator fit test documentation. Mr. Tequextle said that he did not know what Complainant's inspector was talking about.

28. Mr. Tequextle showed Complainant's inspector a full face respirator, but said that he had never been medically evaluated nor fit tested for it.

29. Mr. Whaley had no PPE available for the workers.

30. Mr. Tequextle said that he and Mr. Whaley were the only ones in the field.

31. Mr. Whaley said he had never heard of fit testing the respirators or of any of the Phase I or II requirements. Complainant's inspector informed Mr. Whaley that all of this information could be found on the product label.
32. Mr. Whaley failed to provide a fumigant management plan as requested.
33. Mr. Whaley and Mr. Tequextle admitted neither had been medically cleared to wear respirators.
34. Mr. Whaley stated that he was unsure about the buffer zone, but he thought it was 100 feet. Complainant's inspector replied that if his buffers were 100 feet then the buffer zone would have extended from where the chloropicrin was applied into the Mr. Covington's yard and almost to his house.
35. Mr. Whaley said that he put the field posting and buffer zone signs on the same tobacco stick at the entrance to the field.
36. Complainant's inspector and EDM Farquhar asked Mr. Whaley where he bought the fumigant and said that they would go there to get its label. He directed them to Getsco in Trenton. When they arrived at this Getsco they found that it had no fumigant onsite. The manager told them that the chloropicrin was delivered directly from the company facility in Triest to the grower.
37. Complainant's inspector requested the invoice showing the sale of the chloropicrin to Mr. Whaley; the manager denied that they had sold any chloropicrin to Mr. Whaley. Complainant's inspector and Eastern District Manager asked who the fumigant purchase was billed to and were told "Riggs Brothers Farms."
38. Complainant's inspector and Eastern District Manager determined that Mr. Whaley was working for Riggs Brothers Farms. Complainant's inspector and Eastern District Manager Farquhar called Getsco in Triest and verified that all of the fumigant used by Mr. Whaley was sold to Riggs Brothers Farms.
39. Complainant's inspector and Eastern District Manager then returned to Riggs Brothers Farms and spoke with the Respondent. The Respondent said that they were trying to help Mr. Whaley get back on his feet after Mr. Whaley had filed bankruptcy. Mr. Riggs told Complainant's inspector and Eastern District Manager that they bought all of Mr. Whaley's equipment and hired him on to help them. The Respondent said that Mr. Whaley has one small tobacco contract for the field where the complaint originated but everything was financed by Riggs Brothers Farms including; lease, equipment, fuel, chemical, employees and vehicle. The Respondent had completed the online fumigation training and had a certificate dated March 18, 2013, the same date as that on Mr. Whaley's certificate.
40. Complainant's inspector and Eastern District Manager explained the problems with Mr. Whaley's pesticide license and the Respondent said that it would be best if he took responsibility for the applications that Mr. Whaley had made.

41. The Respondent could be the “certified applicator in charge” but he was not present at the time Mr. Whaley applied the fumigants. The Respondent did not have fumigant management plans for any of his or Mr. Whaley’s tobacco fields, comprising 1600 acres.
42. No one at Riggs Brothers Farms had received medical clearance to wear a respirator.
43. No one at Riggs Brothers Farms had been fit tested to wear a respirator.
44. No fumigant application records were maintained at Riggs Brothers Farm.
45. No one from Riggs Brother Farms complied with any of the Phase I & II fumigant requirements.
46. Complainant’s inspector performed a fumigation inspection and a worker protection inspection while onsite and gave the Respondent and Mr. Whaley each a fumigation manual and factsheet on Worker Protection Standard.
47. During Complainant’s inspector’s WPS inspection he noted:
- a) Riggs Brothers Farms did not maintain a list a recently applied pesticides;
  - b) PPE was not cleaned and maintained;
  - c) PPE was not provided as required by pesticide labeling; and
  - d) a worker, Terris L. Meretti, had not been trained within the past 5 years.
48. Complainant’s Eastern District Manager received a copy of the label for Tri-Pic 100 Fumigant (chloropicrin), EPA Reg. No. 8536-2-87994, trichloronitromethane soil fumigant, Class I, Danger-Poison, from Triest.
49. The Respondent called Complainant’s inspector back on March 27, 2013, and said the field in Duplin County across from Mr. Covington’s house was split by a ditch and the larger section that was fumigated on March 14, 2013, was 70 acres while the smaller section of 35 acres was fumigated on March 15, 2013.
50. According to the chloropicrin product label the buffer zone around the application block would be 510 feet (assuming no credits were obtained); (5 gal./ac X 13.88 lbs AI/gal. = 69.4 lbs. AI and 70 acres).
51. Mr. Covington’s home is 175 feet from the treated field, well within the buffer zone. No agreements were obtained by Riggs Brothers Farms with Mr. Covington.
52. The registered label for Tri-Pic 100 Fumigant contains the following language:

**ENTRY RESTRICTED PERIOD AND NOTIFICATION  
NOTIFICATION**

- Notify workers of the application by warning them orally and by posting Fumigant Treated Area signs. The Fumigant treated Area signs must bear the skull and crossbones symbol and state:
  - DANGER/PELIGRO,”

- “Area under fumigation, DO NOT ENTER/NO ENTRE,”
- “Chloropicrin Fumigant in USE,”
- the date and time of fumigation,
- the date and time entry restricted period is over,
- “TRI-PIC 100 FUMIGANT”, and
- Name, address, and telephone number of the certified applicator in charge of the fumigation.
- Post the Fumigant Treated Area sign at all entrances to the application block.

## **PROTECTION FOR HANDLERS**

### **SUPERVISION OF HANDLERS**

- For all applications except water run: from the start of the application until the fumigant has stopped being delivered/dispensed into the soil . . . the certified applicator must be at the fumigation site in the line of site of the application and must directly supervise all persons performing handling activities.

### **AIR-PURIFYING RESPIRATOR AVAILABILITY FOR PRE-PLANT SOIL USES**

- At a minimum two handlers must have the appropriate air-purifying respirator and appropriate cartridges and these handlers must be fit-tested, trained, and medically examined.

### **RESPIRATOR FIT TESTING, MEDICAL QUALIFICATION AND TRAINING**

Employers must verify that any handler who uses a respirator is:

- Fit-tested and fit-checked using a program that conforms to OSHA’s requirements
- Trained using a program that conforms to OSHA’s requirements
- Examined by a qualified medical practitioner to ensure physical ability to safely wear the style of respirator to be worn.

### **SITE-SPECIFIC FUMIGATION MANAGEMENT PLAN (FMP)**

Prior to the start of fumigation, the certified applicator supervising the application must verify that a site-specific FMP exists for each application block.

The certified applicator supervising the application must verify in writing (sign and date) that the site-specific FMP(s) reflects current site conditions before the start of fumigation.

Once the application begins, the certified applicator must make a copy of the FMP available for viewing by handlers involved in the fumigation.

In case of an emergency, the FMP must be made immediately available when requested by local/state/federal/tribal emergency response and enforcement personnel.

### **Buffer Zone Requirements**

A buffer zone must be established for every fumigant application.

Areas not under the control of the owner of the application block

- Buffer zones must not include residential areas (e.g., employee housing, private property), buildings (e.g., commercial, industrial), outdoor residential



areas (e.g., lawns, gardens, play areas) and other areas that people may occupy, UNLESS:

1. The occupants provide written agreement, prior to the start of the application, that they will voluntarily vacate the buffer zone during the entire buffer zone period, and
2. Reentry by occupants and other non-handlers must not occur until,
  - 1) The buffer zone period has ended, and
  - 2) Sensory irritation is not experienced upon re-entry.

#### **Posting Fumigant Buffer Zones**

- Buffer Zone signs must be placed along or outside the perimeter of the buffer zone, at all usual points of entry and along likely routes of approach from areas where people not under the owner's control may approach the buffer zone.

#### **Emergency Preparedness and Response Measures**

##### **Triggers for Emergency Preparedness and Response Measures**

The certified applicator must either follow the directions under the *Fumigant Site Monitoring* section or follow the directions under the *Response Information for Neighbors* section if:

- the buffer zone is greater than **300 feet** or the **buffer zones overlap**, and there are residences or businesses within **300 feet** from the outer edge of the buffer zone.

#### **Fumigant Site Monitoring**

NOTE: *Fumigant Site Monitoring* is ONLY required if the *Emergency Preparedness and response Measures* are triggered AND directions from the *Response Information for Neighbors* section are not followed.

53. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

- (b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:
- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4), and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

02 N.C. Admin. Code 9L .1805---

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."

§ 170.122 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the location specified for the pesticide safety poster in § 170.135(d) and shall be accessible and legible, as specified in § 170.135(e) and (f).

(b) Timing.

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

§ 170.130 Pesticide safety training for workers.

(a) General requirement—

(1) Agricultural employer assurance. The agricultural employer shall assure that each worker, required by this section to be trained, and has been trained according to this section during the last 5 years, counting from the end of the month in which the training was completed.

§ 170.222 Providing specific information about applications.

When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the same location specified for the pesticide safety poster in § 170.235(d) of this part and shall be accessible and legible, as specified in § 170.235(e) and (f) of this part.

(b) Timing.

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any such handler's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until the handlers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

§ 170.230 Pesticide safety training for handlers.

(a) Requirement. Before any handler performs any handling task, the handler employer shall assure that the handler has been trained in accordance with this section during the last 5 years, counting from the end of the month in which the training was completed.

§ 170.240 Personal protective equipment.

(a) Requirement. Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.

(c) Provision. When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall

provide the appropriate personal protective equipment in clean and operating condition to the handler.

02 N.C. Admin. Code 9L .1807---

(a) Concerning application information requirements contained in Sections 170.122 and 170.222 the following is also required to be completed by the agricultural employer:

(1) In addition to the requirements of Sections 170.122(c)(3), and 170.222(c)(3), the specific time of day when each pesticide application was completed must be recorded immediately upon completion of the application. Each day of the application shall be recorded as a separate record.

54. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

55. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of two thousand four hundred dollars (\$2,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of two thousand four hundred dollars (\$2,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of two thousand four hundred dollars (\$2,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 55(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 55(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

*Randy D. Riggs*

Randy D. Riggs  
Riggs Brothers Farms  
1116 Lees Chapel Road  
Pollocksville, NC 28573

*6/2/15*  
Date

*James W. Burnette, Jr.*  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

*6/8/2015*  
Date

*Barry H. Bloch*  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

*7/8/2015*  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the *14<sup>th</sup>* day of *July*, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:

*Paul Langley*  
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Randy D. Riggs,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Randy D. Riggs, Respondent

Patrick N. Farquhar, Eastern Field Manager

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-35

# SETTLEMENT AGREEMENT

IR2013-35

6. Complainant's inspector collected the following samples:

CS-19 soil, Harold Wilson's Japanese iris bed  
CS-20 vegetation, Harold Wilson's Japanese iris bed  
CS-21 soil, Harold Wilson's garden  
CS-22 vegetation, cabbage, Harold Wilson's garden  
CS-23 vegetation, Sandra Wilson's daylily bed  
CS-24 soil, Sandra Wilson's daylily bed  
CS-25 soil, target

7. Laboratory analysis of samples CS-19 and CS-23 revealed the presence of paraquat.  
Laboratory analysis of sample CS-21 revealed the presence of paraquat and metolachlor.  
Laboratory analysis of sample CS-22 revealed the presence of fomesafen.  
Laboratory analysis of sample CS-24 revealed the presence of paraquat, metolachlor, trifluralin and dithiopyr.

Laboratory analysis of sampled CS-25 revealed the presence of paraquat, metolachlor and fomesafen.

8. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed the case files, including the inspector's photographs. Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to the plants was caused by the drift of Gramoxone SL 2.0 Herbicide.

9. The registered label for Gramoxone SL 2.0 Herbicide contains the following label language:

Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption.

Do not apply when weather conditions favor drift from treated areas.

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:



- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

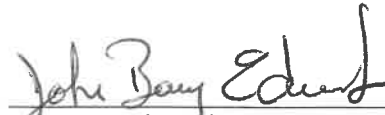
12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of six hundred and fifty dollars (\$650.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of six hundred and fifty dollars (\$650.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of six hundred and fifty dollars (\$650.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

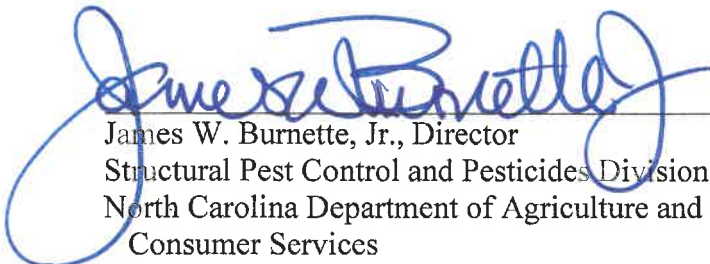
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
John B. Edwards  
230 Buford Short Cut Road  
Monroe, NC 28112

6-1-15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

7/10/2015  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

6/10/2015  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of July, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman

2013-35

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

John B. Edwards.

**Respondent,**

Supplemental Information

Settlement conference was held with John B. Edwards. Respondent negotiated settlement with Dwight E. Seal, District Manager.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-74

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

CAREY F. CARR,

Respondent.

SETTLEMENT AGREEMENT

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Carey F. Carr, Respondent.

1. At all times pertinent to this matter, Respondent was employed by Parkway Ag Center, Inc., Macclesfield, North Carolina, Edgecombe County, North Carolina, and held Pesticide Dealer License No. 3286.

Parkway Ag Center, Inc.  
Tarboro, North Carolina

2. On September 4, 2013, Complainant's inspector performed a routine inspection at Parkway Ag Center, Inc., 2801 Industrial Parkway, Tarboro, North Carolina. Jeff L. Webb and Alton R. Hamill are the licensed pesticide dealers for the Parkway Ag Center in Tarboro.

3. During the inspection, Complainant's inspector reviewed sales records for 2013 and discovered evidence that Parkway Ag Center failed to keep complete records of sales of restricted use pesticides.

4. Cash invoices obtained from Parkway Ag Center showed sales of the following restricted use pesticides:

- 1) Atrazine 4L Herbicide (atrazine), EPA Reg. No. 19713-11, triazine herbicide, Class III, Caution
- 2) Bicep II Magnum Herbicide (s-metolachlor and atrazine), EPA Reg. No. 100-817, chloroacetamide/triazine herbicide, Class III, Caution

- 3) Bifen 2 AG (bifenthrin), EPA Reg. No. 83222-1, pyrethroid insecticide, Class II, Warning
  - 4) Chlorpyrifos 4E AG Insecticide (chlorpyrifos), EPA Reg. No. 66222-19, organophosphate insecticide, Class II, Warning
  - 5) Diazinon AG 500 (diazinon), EPA Reg. No. 66222-9, organophosphate insecticide, Class III, Caution
5. Complainant's inspector determined that the invoices failed to show the following:
- initials of sales clerk
  - name of certified or licensed applicator
  - certification or license number of certified or licensed applicator
  - certification or license expiration date as shown on the certified or licensed applicator's certification card
6. Complainant's inspector further determined that Mr. Hamill made sales of restricted use pesticides to the following non-certified applicators:
1. Charles Whitehead purchased 2.5 gallons of Diazinon AG 500 on April 12, 2013.
  2. Curt Hardee purchased 5 gallons of Atrazine 4L Herbicide on May 7, 2013.
  3. Ben Neville purchased 2.5 gallons of Bicep II Magnum Herbicide on May 28, 2013.
7. Complainant's inspector could not determine who purchased the restricted use pesticides on five invoices. Mr. Hamill stated that he could not determine if the cash sales were made to certified or licensed pesticide applicators.
8. The registered labels for Diazinon AG 500, Atrazine 4L Herbicide and Bicep II Magnum Herbicide contain the following label language:

**RESTRICTED USE PESTICIDE**

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification.

Parkway Ag Center, Inc.  
Macclesfield, North Carolina

9. Complainant's inspector also performed a routine inspection at Parkway Ag Center, Inc., 5470 NC 42 West in Macclesfield, North Carolina. Parkway Ag Center in Tarboro oversees Parkway Ag Center in Macclesfield. The Respondent is the licensed pesticide dealer for the Parkway Ag Center in Macclesfield.
10. During the inspection, Complainant's inspector reviewed sales records for 2013 and discovered evidence that Parkway Ag Center failed to keep complete records of sales of restricted use pesticides.
11. Cash invoices obtained from Parkway Ag Center showed sales of the following restricted use pesticides:

- 1) Atrazine 4L Herbicide (atrazine), EPA Reg. No. 19713-11, triazine herbicide, Class III, Caution
- 2) Bicep II Magnum Herbicide (s-metolachlor, atrazine), EPA Reg. No. 100-817, chloroacetamide/triazine herbicide, Class III, Caution
- 3) Chlorpyrifos 4E AG Insecticide (chlorpyrifos), EPA Reg. No. 66222-19, organophosphate insecticide, Class II, Warning
- 4) Gramoxone SL Herbicide (paraquat), EPA Reg. No. 100-127, bipyridylium, contact, non-selective herbicide, Class I, Danger-Poison
- 5) Mocap 15% Granular Nematicide-Insecticide (ethoprop), EPA Reg. No. 264-457, organophosphate insecticide, Class I, Danger-Poison

12. Complainant's inspector determined that Parkway Ag Center's cash invoices for restricted use pesticides failed to show the following:

- initials of sales clerk
- name of certified or licensed applicator
- certification or license number of certified or licensed applicator
- certification or license expiration date as shown on the certified or licensed applicator's certification card

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-451(a)(3), (5) and (6)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;
- (5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;
- (6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection.

02 N.C. Admin. Code 9L .1305 (2), (3), (4) and (5)---

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (2) initials of sales clerk;
- (3) name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;
- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;

- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

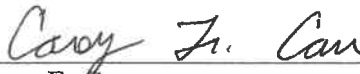
15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of one thousand two hundred dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand two hundred dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand two hundred dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(c) of this Agreement.

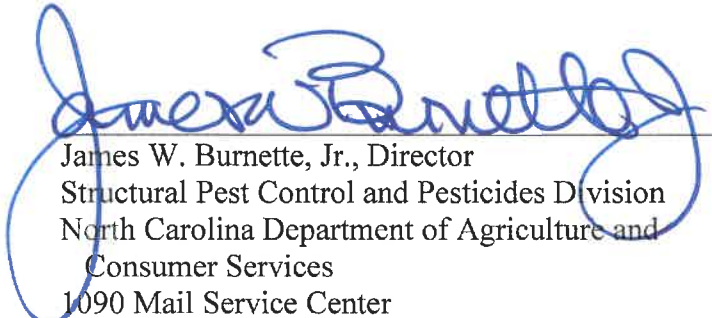


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Carey F. Carr  
Parkway Ag Center, Inc.  
5470 NC 42 West  
Macclesfield, NC 27852

5-20-15  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

5/27/2015  
Date

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

6/2/2015  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of July, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman

2013-074

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Carey F. Carr,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-74

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
 )  
Complainant, )  
 )  
v. )  
 )  
ALTON R. HAMILL, )  
 )  
Respondent. )

SETTLEMENT AGREEMENT

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Alton R. Hamill, Respondent.

1. At all times pertinent to this matter, the Respondent was employed by Parkway Ag Center, Inc., 2801 Industrial Parkway in Tarboro, Edgecombe County, North Carolina, and held Pesticide Dealer License No. 3507.

Parkway Ag Center, Inc.  
Tarboro, North Carolina

2. On September 4, 2013, Complainant's inspector performed a routine inspection at Parkway Ag Center, Inc., 2801 Industrial Parkway, Tarboro, Edgecombe County, North Carolina. Jeff L. Webb and the Respondent are the licensed pesticide dealers for the Parkway Ag Center in Tarboro.

3. During the inspection, Complainant's inspector reviewed sales records for 2013 and discovered evidence that Parkway Ag Center failed to keep complete records of sales of restricted use pesticides.

4. Cash invoices obtained from Parkway Ag Center showed sales of the following restricted use pesticides:

- 1) Atrazine 4L Herbicide (atrazine), EPA Reg. No. 19713-11, triazine herbicide, Class III, Caution

- 2) Bicep II Magnum Herbicide (s-metolachlor and atrazine), EPA Reg. No. 100-817, chloroacetamide/triazine herbicide, Class III, Caution
  - 3) Bifen 2 AG (bifenthrin), EPA Reg. No. 83222-1, pyrethroid insecticide, Class II, Warning
  - 4) Chlorpyrifos 4E AG Insecticide (chlorpyrifos), EPA Reg. No. 66222-19, organophosphate insecticide, Class II, Warning
  - 5) Diazinon AG 500 (diazinon), EPA Reg. No. 66222-9, organophosphate insecticide, Class III, Caution
5. Complainant's inspector determined that the invoices failed to show the following:
- initials of sales clerk
  - name of certified or licensed applicator
  - certification or license number of certified or licensed applicator
  - certification or license expiration date as shown on the certified or licensed applicator's certification card
6. Complainant's inspector further determined that the Respondent made sales of restricted use pesticides to the following non-certified applicators:
- Charles Whitehead purchased 2.5 gallons of Diazinon AG 500 on April 12, 2013.  
Curt Hardee purchased 5 gallons of Atrazine 4L Herbicide on May 7, 2013.  
Ben Neville purchased 2.5 gallons of Bicep II Magnum Herbicide on May 28, 2013.
7. Complainant's inspector could not determine who purchased the restricted use pesticides on five invoices. The Respondent stated that he could not determine if the cash sales were made to certified or licensed pesticide applicators.
8. The registered labels for Diazinon AG 500, Atrazine 4L Herbicide and Bicep II Magnum Herbicide contain the following label language:

**RESTRICTED USE PESTICIDE**

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification.

Parkway Ag Center, Inc.  
Macclesfield, North Carolina

9. Complainant's inspector also performed a routine inspection at Parkway Ag Center, Inc., 5470 NC 42 West in Macclesfield, North Carolina. Parkway Ag Center in Tarboro oversees Parkway Ag Center in Macclesfield. Carey F. Carr is the licensed pesticide dealer for the Parkway Ag Center in Macclesfield.
10. During the inspection, Complainant's inspector reviewed sales records for 2013 and discovered evidence that Parkway Ag Center failed to keep complete records of sales of restricted use pesticides.

11. Cash invoices obtained from Parkway Ag Center showed sales of the following restricted use pesticides:

- 1) Atrazine 4L Herbicide (atrazine), EPA Reg. No. 19713-11, triazine herbicide, Class III, Caution
- 2) Bicep II Magnum Herbicide (s-metolachlor, atrazine), EPA Reg. No. 100-817, chloroacetamide/triazine herbicide, Class III, Caution
- 3) Chlorpyrifos 4E AG Insecticide (chlorpyrifos), EPA Reg. No. 66222-19, organophosphate insecticide, Class II, Warning
- 4) Gramoxone SL Herbicide (paraquat), EPA Reg. No. 100-127, bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison
- 5) Mocap 15% Granular Nematicide-Insecticide (ethoprop), EPA Reg. No. 264-457, organophosphate insecticide, Class I, Danger-Poison

12. Complainant's inspector determined that the invoices failed to show the following:

- initials of sales clerk
- name of certified or licensed applicator
- certification or license number of certified or licensed applicator
- certification or license expiration date as shown on the certified or licensed applicator's certification card

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-451(a)(3), (5) and (6)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;
- (5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;
- (6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection.

02 N.C. Admin. Code 9L .1302---

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

02 N.C. Admin. Code 9L .1305 (2), (3), (4) and (5)---

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (2) initials of sales clerk;
- (3) name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;
- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.


15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of two thousand one hundred dollars (\$2,100.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of two thousand one hundred dollars (\$2,100.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of two thousand one hundred dollars (\$2,100.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Alton R. Hamill  
Parkway Ag Center, Inc.  
P.O. Box 1300  
Tarboro, NC 27886

5-22-15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

5/27/2015  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

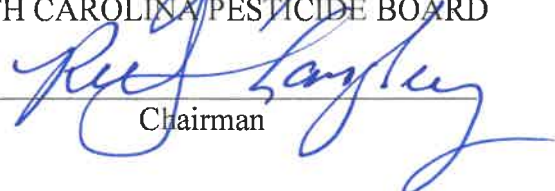
6/2/2015  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of July, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman



2013-074

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Alton R. Hamill,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-74

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

BEN NEVILLE, JR., )

Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Ben Neville, Jr., Respondent.

1. At all times pertinent to this matter, Respondent resided in Whitakers, Nash County, North Carolina.
2. On September 4, 2013, Complainant's inspector performed a routine inspection at Parkway Ag Center, Inc., 2801 Industrial Parkway in Tarboro, North Carolina, and discovered evidence that Parkway Ag Center sold a restricted use pesticide to a non-certified applicator.
3. During the inspection, Complainant's inspector reviewed sales records and determined that the Respondent purchased 2.5 gallons of Bicep II Magnum Herbicide (s-metolachlor and atrazine), EPA Reg. No. 100-817, chloroacetamide/triazine herbicide, Class III, Caution, on May 28, 2013.
4. The Pesticide Section's records reflect that the Respondent's private certification expired in 1993.
5. On June 18, 2014, Complainant's inspector met with the Respondent. The Respondent stated that he had applied the Bicep II Magnum Herbicide he purchased from Parkway Ag Center to his corn.
6. The registered label for Bicep II Magnum Herbicide contains the following language:

#### RESTRICTED USE PESTICIDE

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4), (5) and (15)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

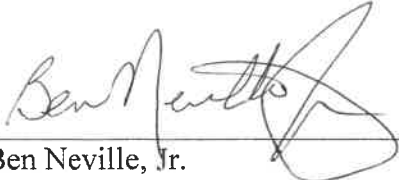
(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

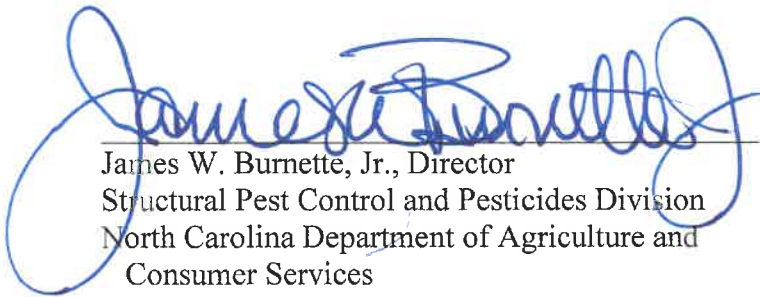
- (a) That Respondent agrees to pay the sum of one thousand dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Ben Neville, Jr.  
P.O. Box 27  
Whitakers, NC 27891

  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

  
Date

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of July, 2015

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman

2013-074

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Ben Neville, Jr.,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-83

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
SHERMAN T. MACARTHUR, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Sherman T. MacArthur, Respondent.

1. At all times pertinent to this matter, Respondent was the owner of MacArthur's Landscaping, 159 Carolina Paradise, Rutherfordton, North Carolina.
2. On October 18, 2013, Complainant's inspector investigated a complaint by Grayson Porter, 208 Courtland Street, Spindale, Rutherford County, North Carolina, regarding a pesticide application on her property.
3. Complainant's inspector met with Ms. Porter at her residence. Ms. Porter stated that she made arrangements with the Respondent to clear the back of her property. She said she told the Respondent that she did not want him to use any pesticides. She later determined that the Respondent used Crossbow Herbicide (2,4-D and triclopyr), EPA Reg. No. 62719-260-82, a herbicide, Class III, Caution, to clear the back of her property.
4. Complainant's inspector met with the Respondent at a different property he maintains on Courtland Street. The Respondent stated that Ms. Porter asked him to clear the back of her property as cheaply as possible with a preference to not use pesticides. He said he applied Crossbow Herbicide as an initial burn down on the poison ivy and wisteria.
5. During the inspection, Complainant's inspector determined that the Respondent's Ground Applicator License No. 4410 had expired on December 31, 2012, and had not been renewed.

6. The Respondent is currently licensed to apply pesticides.

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-452(a)---

(a) No person shall engage in the business of pesticide applicator within the State at any time unless he is licensed annually as a pesticide applicator by the Board.

N.C. Gen. Stat. § 143-456(a)(4), (5) and (15)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

02 N.C. Admin. Code 9L .0503(a)---

(a) The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:



- (a) That Respondent agrees to pay the sum of one thousand two hundred dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand two hundred dollars ~~(\$1,200.00)~~ <sup>~ \$1,000.00</sup> within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand two hundred dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Sherman T. MacArthur  
MacArthur's Landscaping  
159 Carolina Paradise  
Rutherfordton, NC 28139

Date

6/8/15



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

Date

7/10/2015



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

Date

7/10/2015

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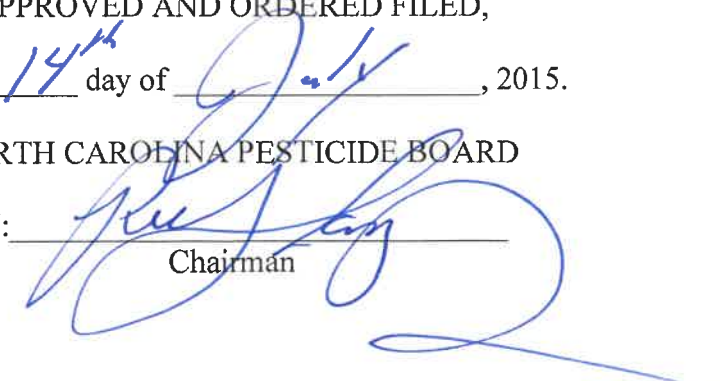
APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of July, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:

Chairman



2013-83

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Sherman T. MacArthur.

**Respondent,**

Supplemental Information

Settlement conference was held with Sherman MacArthur. Respondent negotiated settlement with Dwight E. Seal, District Manager.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD

File No. IR2013-34

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

WILLIAM D. HALL,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and William D. Hall, Respondent.

1. At all times pertinent to this matter, Respondent was employed by Crabbe Aviation, and held Aerial Applicator (Pilot) License No. 785.
2. On June 7, 2013, Complainant's inspector investigated a complaint by Mary Harper, 130 Longhorn Drive, Moyock, Currituck County, North Carolina, regarding an aerial application to the field across from her home that damaged her garden and yard. The field is located along Ranchland Drive.
3. Complainant's inspector met with John W. Decker, who also resides at 130 Longhorn Drive. Mr. Decker stated that on June 1 and June 2, 2013, he observed a yellow airplane spraying the fields along Ranchland Drive. He said he noticed the garden and grass dying on June 3 or 4, 2013.
4. Complainant's inspector inspected the area and noted damage to the garden, grass, mimosa tree, and vegetation in the hedge between the home and the field.
5. Gail Romich, 174 Ranchland Drive, Moyock, North Carolina, also contacted Complainant's inspector to file a complaint. Ms. Romich reported that May 30 or 31, 2013, an aerial application to a corn field across from her home damaged her garden, rose bushes and vegetation. She said she noticed things starting to die on or about June 4, 2013. She also reported she smelled a bad odor and complained of breathing and sleeping problems. She did not seek medical attention.

6. Complainant's inspector met with Ms. Romich at her residence and inspected the area.
7. Complainant's inspector noted damage to her garden, mimosa tree, and rose bushes.
8. Mary J. Plaster, 178 Ranchland Drive, Moyock, North Carolina, also contacted Complainant's inspector to file a complaint regarding damage to her garden. Ms. Plaster reported that on May 29, 2013, she observed a crop duster spraying the field across from her home. She noticed plants in her garden wilting on June 1, 2013. She also reported breathing problems after the application; but did not seek medical attention.
9. Complainant's inspector met with Steve M. Whitaker, who also resides at 178 Ranchland Drive. Mr. Whitaker stated that he had breathing problems after the application; but did not seek medical attention.
10. Complainant's inspector inspected the area and noted damage to the garden.
11. Complainant's inspector determined Justice Family Farms owns the land along Ranchland Drive.
12. Complainant's inspector met with Gil Slagle, District Manager for Southern States, at the farm. Mr. Slagle stated that Southern States contracted with Crabbe Aviation to apply Atrazine 4L Flowable Herbicide (atrazine), EPA Reg. No. 35915-4-60063, triazine herbicide, Class III, Caution; Dual II Magnum Herbicide (S-metolachlor), EPA Reg. No. 100-818, chloroacetamide herbicide, Class III, Caution; and Roundup PowerMAX Herbicide (glyphosate), EPA Reg. No. 524-549, defoliant/desiccant herbicide, Class III, Caution, to the corn.
13. On June 10, 2013, Complainant's inspector met with Matthew Crabbe and the Respondent at Crabbe Aviation in Elizabeth City, North Carolina.
14. The Respondent stated that on May 29 and 30, 2013, he aerially applied Atrazine 4L Flowable Herbicide, Dual II Magnum Herbicide and Roundup PowerMAX Herbicide to the corn along Ranchland Drive.
15. On June 11, 2013, Mr. Crabbe and the Respondent contacted Complainant's inspector to make him aware that pesticides had been applied at Ranchland Drive and Mustang Trail.
16. On June 12, 2013, Complainant's inspector went to the site and inspected the area.
17. Complainant's inspector noted dead vegetation on the ditch bank at Ranchland Drive and Mustang Trail.
18. On June 17, 2013, Complainant's inspector met with Barbara E. Busitzky, 101 Mustang Trail, Moyock, North Carolina. Ms. Busitzky stated that she had applied Crossbow (2,4-D and triclopyr), EPA Reg. No. 62719-260, chlorinated phenoxy/pyridine carboxylic acid herbicide, Class III, Caution, along her side of the road at least six weeks ago.

19. Complainant's inspector determined Ms. Busitzky rents her horse pasture to Barry M. Robertson and supplied him with Nufarm Weedar 64 (2,4-D), EPA Reg. No. 71368-1, chlorinated phenoxy herbicide, Class III, Caution, and her sprayer.

20. Complainant's inspector contacted Mr. Robertson. Mr. Robertson stated that in mid-May he had applied the 2,4-D to the pasture with Ms. Busitzky's sprayer. This application was made before Ms. Busitzky applied Crossbow with her sprayer.

21. Complainant's inspector collected samples including the following:

- PW-01 vegetation, Ms. Harper's garden
- PW-03 vegetation, 62 feet from Ms. Harper's residence and 11.5 feet from Ranchland Drive
- PW-05 vegetation, 34.5 feet from Ms. Romich's residence
- PW-07 vegetation, 102.5 feet from Ms. Plaster's residence and 19.5 feet from Ranchland Drive
- PW-09 vegetation, south ROW for Ranchland Drive, 11.5 feet from Ranchland Drive
- PW-11 vegetation, target
- PW-13 vegetation, southeast ROW for Mustang Trail, 19.5 feet from Mustang Trail

22. Laboratory analysis of sample PW-01 revealed the presence of atrazine and metolachlor. Laboratory analysis of samples PW-05, PW-09 and PW-11 revealed the presence of atrazine and glyphosate. Laboratory analysis of sample PW-07 revealed the presence of atrazine. Laboratory analysis of sample PW-13 revealed the presence of 2,4-D, glyphosate, AMPA, and metolachlor.

23. During the investigation, Complainant's inspector determined that the Respondent allowed pesticides to drift and/or be deposited within 25 feet of Ranchland Road and Mustang Trail and within 100 feet of Ms. Romich's residence.

24. Dr. Henry F. Wade, the Pesticide Section's Environmental Program Manager, reviewed the case file, including the inspector's photographs. Dr. Wade concluded to a reasonable degree of scientific certainty that the damage to some of the vegetables in the three gardens was caused by herbicide drift from the aerial application by William Hall.

25. The registered labels for Atrazine 4L Flowable Herbicide and Dual II Magnum Herbicide contain the following language:

The pesticide should only be applied when the potential for drift to adjacent sensitive areas (e.g., residential areas, . . . non-target crops) is minimal (e.g., wind is blowing away from the sensitive areas).

The registered label for Roundup PowerMAX Herbicide contains the following language:

AVOID CONTACT OF THIS HERBICIDE WITH FOLIAGE, GREEN STEMS, EXPOSED NON-WOODY ROOTS OR FRUIT OF CROPS, DESIRABLE PLANTS AND TREES, AS SEVERE INJURY OR DESTRUCTION COULD RESULT.

Do not allow the herbicide solution to mist, drip, drift, or splash onto desirable vegetation, as minute quantities of this product can cause severe damage or destruction to the crop, plants or other areas on which application was not intended.

Apply this product only when the potential for drift to adjacent sensitive areas (e.g., residential areas, . . . non-target crops) is minimal (e.g., wind is blowing away from the sensitive areas).

26. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1005(c), (e) and (f)---

- (c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance;
- (e) No pesticide shall be deposited within 100 feet of any residence;
- (f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

27. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

28. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Eight Hundred Dollars (\$1,800.00) to the North Carolina Department of Agriculture and Consumer Services in six (6) monthly installments of Three Hundred Dollars (\$300.00) each. Respondent shall pay his first installment on or before December 1, 2015. Respondent shall pay each of the five subsequent payments on or before the first day of each month. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service or other commercial carrier, prepaid, and the envelope is postmarked on or before the first day of the month in which the payment is due;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the sum of One Thousand Eight Hundred Dollars (\$1,800.00) as set forth in the payment terms in subparagraph 28(a), this Agreement will constitute a civil penalty assessment of the Board of the entire unpaid portion of One Thousand Eight Hundred Dollars (\$1,800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 28(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 28(c) of this Agreement.



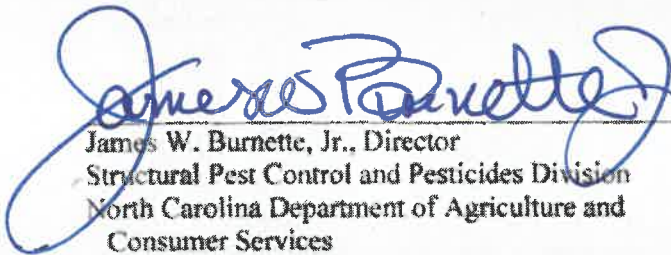
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



William D. Hall  
Crabbe Aviation  
Post Office Box 534  
Mechanicsville, Virginia 23111

Date 11/6/2015



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

Date 11/10/2015



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

Date 10 NOV 2015

\*\*\*\*\*  
APPROVED AND ORDERED FILED,

this the 10 day of November, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

William D. Hall,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

William D. Hall, Respondent  
Barry H. Bloch, Assistant Attorney General

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD

COUNTY OF WAKE

File No. IR2013-40

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

ROLAND W. BONEY, JR.,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Roland W. Boney, Jr., Respondent.

1. At all times pertinent to this matter, Respondent held Private Certification No. 32007.
2. On June 17, 2013, Complainant's inspector investigated a complaint by Mike Long, 619 Rosemary Road, Rose Hill, Duplin County, North Carolina, regarding possible 2,4-D damage on his grapevines.
3. Complainant's inspector met with Mr. Long at his vineyard and inspected the grapes. Complainant's inspector did not observe any pesticide damage.
4. Mr. Long stated that the Respondent tends corn next to his grapevines. He said that the Respondent had not applied 2,4-D to the corn.
5. Complainant's inspector then met with the Respondent at his residence. The Respondent stated that the only product he had applied was GLY-4 Plus Herbicide (glyphosate), EPA Reg. No. 72693-1, nonselective, post-emergent herbicide, Class III, Caution.
6. Complainant's inspector collected samples including the following:  
  
BC-25 vegetation, Mr. Long's grapevines  
BC-26 vegetation, target

7. Laboratory analysis of samples BC-25 and BC-26 revealed the presence of glyphosate.

8. The registered label for GLY-4 Plus Herbicide contains the following language:

Avoid contact of herbicide with foliage, green shoots or stems, bark, exposed roots (including those emerging from plastic mulch), or fruit of crops because severe injury or destruction may result.

9. Duplin County Cooperative Extension Agent Tom Hroza provided the following statement:

I visited with Mike Long on Monday afternoon September 16, 2013, in Rose Hill. The symptoms I observed were consistent with glyphosate injury. I observed stunted leaves and stems with no leaves. Damage was worse on the side next to the cultivated field than it was on the side next to the woods.

10. Whit Jones, Heard it Through the Grapevine Consulting Services, visited Mr. Long's grape vineyard on September 25, 2013, and indicated that herbicide injury was obvious over the entire vineyard.

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

- (b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:
  - (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:
  - (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
  - (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d). Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Three Hundred Dollars (\$300.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) Respondent's Private Applicator's license, number 32007, is hereby suspended for a period of one calendar year, 2016, beginning on January 1, 2016. At midnight, December 31, 2016, Respondent's license and privileges shall be reinstated;
- (d) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (e) That Respondent agrees that if he fails to pay the total agreed upon sum of Three Hundred Dollars (\$300.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Three Hundred Dollars (\$300.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (f) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(e) and waives said right by consenting to the terms of

this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(e) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Roland W. Boney Jr.

Roland W. Boney, Jr.  
455 Rosemary Road  
Rose Hill, NC 28458

10/6/15  
Date

James W. Burnette, Jr.

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

10/16/2015  
Date

Barry H. Bloch

Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

16 Oct 2015  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10 day of November, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY: Rufus Layton  
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Roland W. Boney, Jr.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Mr. Roland W. Boney, Jr., Respondent  
Patrick N. Farquhar, Eastern Field Manager  
Douglas P. Bullard, Pesticide Inspector I

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-84

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

CHARLES F. WHITE,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Charles F. White, Respondent.

1. At all times pertinent to this matter, Respondent was employed by Cardinal Chemicals, Inc., 1583 Highway 258 South, Kinston, Lenoir County, North Carolina.

2. On October 28, 2013, during a routine inspection at the Town of Morehead City, Building & Grounds Department, Public Works Building, Complainant's inspector observed ten 50 pound bags of TopChoice Insecticide (fipronil), EPA Reg. No. 432-1217, fiprol insecticide, Class III, Caution. Phillip L. Terry, manager, stated that the TopChoice was purchased from Jerry T. Elliott of Elliott Enterprises in Dover, North Carolina.

3. The Pesticide Section's records indicate that neither Mr. Elliot nor anyone associated with Elliott Enterprises is licensed as a pesticide dealer.

4. Complainant's inspector met with Mr. Elliott at Elliott Enterprises, 12380 NC Highway 55 West, Dover, North Carolina. Mr. Elliott stated that his pesticide dealer's license expired in 1991. He said that he purchased the TopChoice Insecticide from Cardinal Chemicals in Kinston, North Carolina.

5. Complainant's inspector met with Julian E. Brown, warehouse manager, at Cardinal Chemicals, Inc., 1583 Highway 258 South, Kinston, North Carolina. Mr. Brown stated that Cardinal Chemicals sold twenty-four 50 pound bags of TopChoice Insecticide to Jerry Elliott of Elliott Enterprises on September 18, 2013. He said that the Respondent was responsible for the sale to Mr. Elliott.



6. Complainant's inspector contacted the Respondent and he confirmed that he was responsible for the sale made to Mr. Elliott on September 18, 2013.

7. On June 30, 2014, Complainant's inspector returned to Cardinal Chemicals and met with Mr. Brown. Complainant's inspector determined that Cardinal Chemicals also sold Mr. Elliott eight 50 pound bags of TopChoice Insecticide on May 31, 2013, and six 50 pound bags of TopChoice Insecticide on June 30, 2013. The Respondent was responsible for these sales to Mr. Elliott.

8. At the time of these sales, no one was licensed as a pesticide dealer at Elliott Enterprises.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(5)---

(b) "It shall be unlawful:

(5) For any person to distribute, sell or offer for sale any restricted use pesticide to any dealer who does not hold a valid North Carolina Pesticide Dealer License."

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

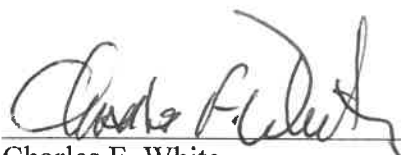
11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Four Hundred Dollars (\$400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Four Hundred Dollars (\$400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Four Hundred Dollars (\$400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.

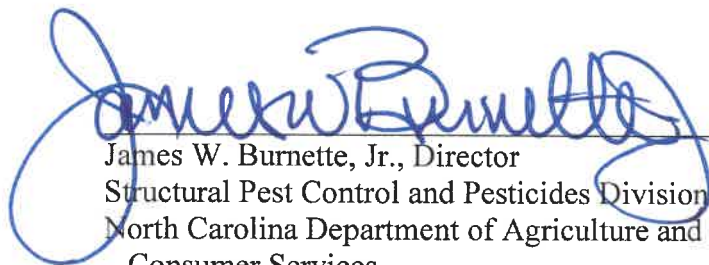
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Charles F. White  
Cardinal Chemicals, Inc.  
1583 Highway 258 South  
Kinston, NC 28502

10-20-15  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

10/30/2015  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

29 October 2015  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10 day of November, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Charles F. White,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Charles F. White, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-46

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

JEFF CUMBIE, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Jeff Cumbie, Respondent.

1. At all times pertinent to this matter, Respondent was employed as a manager by TruGreen, 1043 Robeson Street, Fayetteville, North Carolina.
2. The Respondent's Ground Applicator License No. 27498 expired December 31, 2012, and was not renewed until April 24, 2013.
3. On June 24, 2013, Complainant's inspector investigated a complaint by Gloria Barton, 2814 Prioress Drive, Fayetteville, Cumberland County, North Carolina, regarding drift from a pesticide application to her neighbor's property that damaged her grass and plants.
4. This application was made on June 12, 2013, to Carl Lazare's property, 2816 Prioress Drive, Fayetteville, North Carolina, by TruGreen, Fayetteville.
5. Complainant's inspector met with Ms. Barton at her residence and observed damaged areas along the property line separating the properties.
6. Complainant's inspector then met with Mr. Lazare at his residence. Mr. Lazare stated that he contracted with TruGreen, Fayetteville, for lawn service.
7. On June 25, 2013, Complainant's inspector met with the Respondent at TruGreen, 1043 Robeson Street, Fayetteville, North Carolina.
8. Records provided by the Respondent showed the following pesticide applications to Mr. Lazare's property:

- 1) January 31, 2013:
    - a. MCPA L.V. 4 Ester (ester of methyl chlorophenoxyacetic acid), EPA Reg. No. 228-156, postemergence, selective, translocated phenoxy herbicide, Class II, Warning;
    - b. Sim-Trol 4L (simazine), EPA Reg. No. 35915-11-60063, triazine herbicide, Class III, Caution; and
    - c. Vanquish (dicamba), EPA Reg. No. 100-884, benzoic acid herbicide, Class III, Caution, with wind speed at 23 mph.
  - 2) March 22, 2013:
    - a. MCPA-4 Amine (dimethylamine salt of methyl chlorophenoxyacetic acid), EPA Reg. No. 228-143, postemergence, selective, translocated phenoxy herbicide, Class I, Danger; and
    - b. Vanquish with wind speed at 5 mph.
  - 3) June 12, 2013:
    - a. Manor (metsulfuron methyl), EPA Reg. No. 228-373, sulfonyleurea herbicide, Class III, Caution, with wind speed at 3 mph.
9. These applications were made under the supervision of the Respondent.
10. During the inspection, Complainant's inspector determined that the Respondent's Ground Applicator License No. 27498 expired December 31, 2012, and was not renewed until April 24, 2013.
11. Complainant's inspector collected the following samples:
- DB-42 soil, Ms. Barton's property
  - DB-43 vegetation, Ms. Barton's property
  - DB-44 soil, target
12. Laboratory analysis of sample DB-42 revealed the presence of atrazine.  
Laboratory analysis of sample DB-44 revealed the presence of metsulfuron methyl.
13. The registered label for MCPA L.V. 4 Ester contains the following language:
- Apply only when the wind is 2 to 10 mph at the application site.
- The registered label for Sim-Trol 4L contains the following language:
- Do not apply at wind speed greater than 10 mph.
- The registered label for Vanquish contains the following language:
- Do not apply Vanquish at sustained wind speeds greater than 15 mph.
14. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:
  - (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-452(a)---

- (a) No person shall engage in the business of pesticide applicator within the State at any time unless he is licensed annually as a pesticide applicator by the Board.

N.C. Gen. Stat. § 143-456(a)(2), (5) and (15)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:
  - (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
  - (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
  - (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

02 N.C. Admin. Code 9L .0503(a)---

- (a) The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.

15. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

16. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:


- (a) That Respondent agrees to pay the sum of one thousand dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of one thousand dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of one thousand dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 16(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 16(c) of this Agreement.

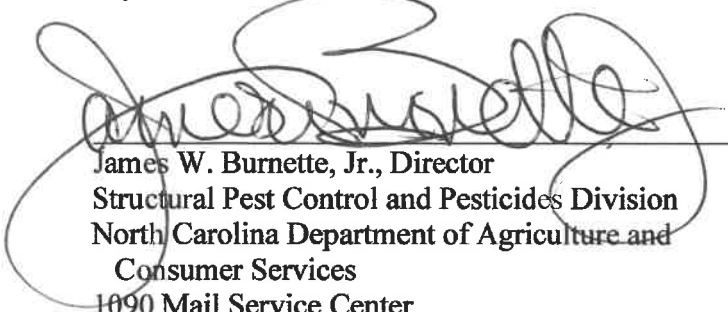


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Jeff Cumbie  
1043 Robeson Street  
Fayetteville, NC 28305

9/2/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

9/11/2015  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

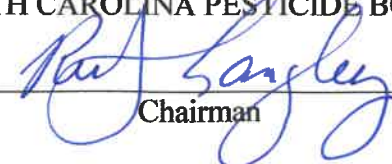
9/25/2015  
\_\_\_\_\_  
Date

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APPROVED AND ORDERED FILED,

this the 10 day of November, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Jeff Cumbie,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Mr. Jeff Cumbie, Respondent

Ms. Tina Morgan, Manager of Branch Legal Operations for Trugreen

Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File No. IR2013-65

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

AL ALLEN, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Al Allen, Respondent.

1. At all times pertinent to this matter, Respondent was associated with Allen Aviation, Inc., 150 Shanda Lane, Aynor, South Carolina, and held Aerial Applicator (Pilot) License No. 716.
2. On June 5, 2013, Complainant's inspector met with Robert A. Bass, Sr., 5201 Peacock Road, Whiteville, Columbus County, North Carolina, regarding pesticide complaint investigations.
3. Complainant's inspector met with Mr. Bass at his residence. Mr. Bass stated that drift from an aerial application to Bernard Lennon's flax field adjacent to his wheat field damaged his wheat. The application was made by the Respondent.
4. Complainant's inspector noted damage to the wheat on the side of the field adjacent to the flax field.
5. On May 20, 2013, Michael Shaw, Field Crop Agent, NC Cooperative Extension Service in Whiteville, North Carolina, visited the site. Mr. Shaw took photographs of the wheat. Mr. Bass said that Mr. Shaw told him that the damage appeared to be drift damage from the flax burn down aerial treatment.

6. Mr. Bass did not want the drift incident investigated at that time.
7. On August 9, 2013, Mr. Bass contacted Complainant's inspector to have the drift incident investigated.
8. On August 12, 2013, Complainant's inspector met with Mr. Bass at his residence. Mr. Bass provided Complainant's inspector with copies of Mr. Shaw's photographs. Mr. Bass had harvested his wheat and planted soybeans in the field.
9. Complainant's inspector contacted Mr. Lennon. Mr. Lennon stated that he had harvested his flax and planted soybeans.
10. As the fields had been harvested, no samples could be collected.
11. On August 13, 2013, Complainant's inspector met with the Respondent at his office, 1690 Airport Road, Conway, South Carolina.
12. The Respondent provided Complainant's inspector with his aerial application log sheet that showed the application of Honcho Plus (glyphosate), EPA Reg. No. 524-454, non-selective herbicide, Class II, Warning, to the flax crop adjacent to Mr. Bass' wheat field on May 9, 2013.
13. During the investigation, Complainant's inspector determined that the Respondent failed to have his aircraft inspected prior to applying pesticides in North Carolina in 2013.
14. Complainant's inspector conducted an inspection and licensed the Respondent's aircraft to apply pesticides in North Carolina.
15. The registered label for Honcho Plus contains the following language:

Do not allow the herbicide to mist, drip, drift, or splash onto desirable vegetation since minute quantities of this product can cause severe damage or destruction to the crop, plants or other areas on which treatment was not intended.
16. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:
  - (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § N.C. Gen. Stat. § 143-452(b)---

(b) Applications for pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of seventy-five dollars (75.00) for each pesticide applicator's license. In addition, an annual inspection fee of twenty-five dollars (\$25.00) shall be submitted for each aircraft to be licensed. Should any aircraft fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an additional twenty-five dollar (\$25.00) inspection fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with the laws and regulations. All aircraft licensed to apply pesticides shall be identified by a license plate or decal furnished by the Board at no cost to the licensee, which plate or decal shall be affixed on the aircraft in a location and manner prescribed by the Board.

N.C. Gen. Stat. § 143-456(a)(2), (4), (5) and (8)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (8) Operated unlicensed equipment.

02 N.C. Admin. Code 9L .1005(f)---

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

17. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

18. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Four Hundred Dollars (\$400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Four Hundred Dollars (\$400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Four Hundred Dollars (\$400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 18(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 18(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

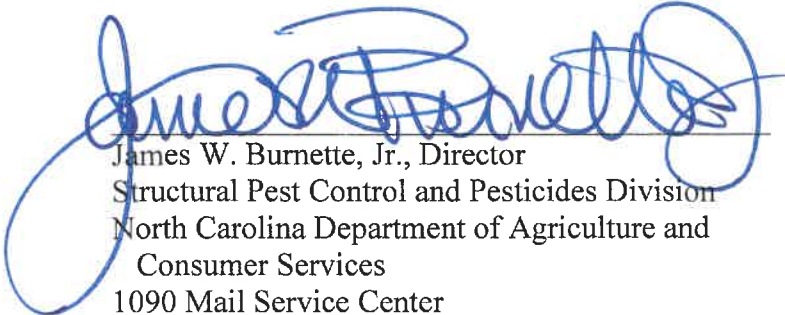
BY CONSENT:



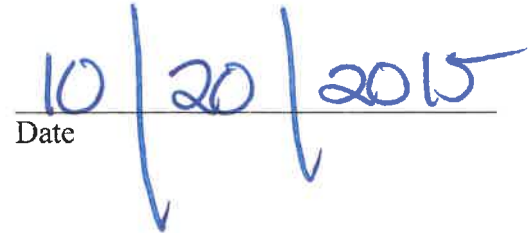
Al Allen  
Allen Aviation, Inc.  
150 Shanda Lane  
Aynor, SC 29511



Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090



Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629



Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10 day of November, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:



Chairman

2013-65

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Al Allen

**Respondent,**

Supplemental Information

Settlement conference was held with Al Allen, Allen Aviation with Barry Bloch.  
Respondent paid civil penalty with discussion.



STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

COUNTY OF WAKE

File No. IR2013-78

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

EUGENE J. KRITTER, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Eugene J. Kritter, Respondent.

1. At all times pertinent to this matter, Respondent was associated with Kritter Cropdusting, Inc., Culpeper, Virginia, and held Aerial Applicator (Pilot) License No. 548.
2. On September 12, 2013, Complainant's inspector investigated a citizen's inquiry regarding an aerial pesticide application to a soybean field at Parker and Sons Farm, 1723 Macedonia Church Road, Monroe, Union County, North Carolina.
3. Complainant's inspector met with David C. Parker at Parker and Sons Farm. Mr. Parker stated that on September 11, 2013, the Respondent applied Helm Helosate Plus Advanced (glyphosate), EPA Reg. No. 74530-43, herbicide, Class III, Caution; Lambda-Cyhalothrin 1 EC (Lambda-cyhalothrin), EPA Reg. No. 228-708, insecticide, Class II, Warning; and Priaxor (fluxapyroxad), EPA Reg. No. 7969-31, fungicide, Class III, Caution, to the soybean field.
4. On September 12, 2013, Complainant's inspector met with the Respondent at the Allan Baucom Farm, 9601 Morgan Mill Road, Monroe, North Carolina.
5. Complainant's inspector determined that the Respondent failed to have his aircraft inspected prior to applying pesticides in North Carolina in 2013.
6. Complainant's inspector conducted an inspection and licensed the Respondent's aircraft to apply pesticides in North Carolina.

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § N.C. Gen. Stat. § 143-452(b)---

(b) Applications for pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of seventy-five dollars (75.00) for each pesticide applicator's license. In addition, an annual inspection fee of twenty-five dollars (\$25.00) shall be submitted for each aircraft to be licensed. Should any aircraft fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an additional twenty-five dollar (\$25.00) inspection fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with the laws and regulations. All aircraft licensed to apply pesticides shall be identified by a license plate or decal furnished by the Board at no cost to the licensee, which plate or decal shall be affixed on the aircraft in a location and manner prescribed by the Board.

N.C. Gen. Stat. § 143-456(a)(4), (5) and (8)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (8) Operated unlicensed equipment.

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of eight hundred dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of eight hundred dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of eight hundred dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

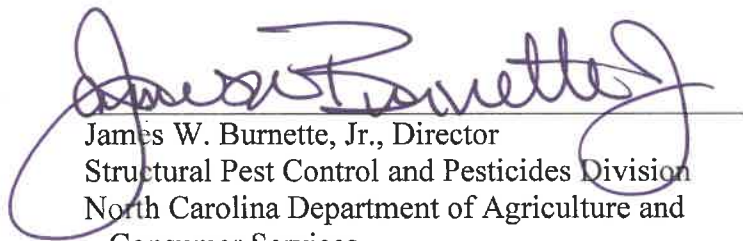
BY CONSENT:



Eugene J. Kritter  
Kritter Cropdusting, Inc.  
20634 Mount Pony Road  
Culpeper, VA 22701

Date

8/17/15



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

Date

8/24/2015



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

Date

8/24/15

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10 day of November, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman

2013-78

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Eugene Kritter

**Respondent,**

Supplemental Information

Settlement conference was held with Eugene Kritter by Dwight Seal, Western District Manager.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-79

## SETTLEMENT AGREEMENT

3. On September 23, 2013, Inspector Colborne met with Mr. Martin Blaney, Housing Authority's Director of Operations, at his office. Mr. Blaney told Insp. Colborne that in April or May of 2013, Mr. Hancel Fields, a Housing Authority employee, made an herbicide application to vines and brush on Housing Authority property adjacent to Ms. Osmanovic's wood fence. Mr. Blaney said that Mr. Fields applied EXSEL X-L Will Kill.

4. On September 23, 2013, Insp. Colborne met with Mr. Fields and Mr. Timothy R. Jedrey. Mr. Fields said that he applied approximately 1/3 gallon of EXSEL X-L herbicide using a two gallon hand pump sprayer to the vines and brush adjacent to the fence. Both Mr. Fields and Mr. Jedrey answered questions about the herbicide application. Mr. Fields said that he cut the brush and vines down to ground level prior to the application in question to minimize herbicide spray drift. Mr. Jedrey acknowledged directing Mr. Fields on how to make the application. Mr. Jedrey was advised as the licensed applicator he was responsible if a misapplication occurred. Mr. Jedrey responded that he was aware of that fact.

5. Mr. Blaney told Insp. Colborne that he intends to compensate Mrs. Osmanovic for the herbicide injury to her backyard without any acknowledgement of having caused the herbicide injury to her property.

6. Mr. Tom Glasgow, County Extension Director, University Extension Service, inspected Mrs. Osmanovic's garden and stated the following, "There was a small amount of phenoxy herbicide injury."

7. The registered label for EXSE: X-L WILL KILL SEASON LONG NON-SELECTIVE WEED KILLER contains the following language:

*EXSEL X-L WILL KILL SEASON LONG NON-SELECTIVE WEED KILLER*

**"DIRECTIONS FOR USE ... GENERAL PRECAUTIONS & RESTRICTION ...** Do not apply, drain or flush equipment on or near desirable trees or other plants, or on areas where their roots may extend or in locations where the chemical may be washed into contact with their roots. ... Prevent drifts of spray to desirable plants. ..."

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1404

“No person shall apply a pesticide(s) under such conditions that drift from pesticides(s) particles or vapors results in adverse effect.”

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

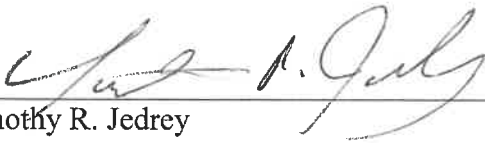
10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Five Hundred Dollars (\$1,500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Five Hundred Dollars (\$1,500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Five Hundred Dollars (\$1,500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.

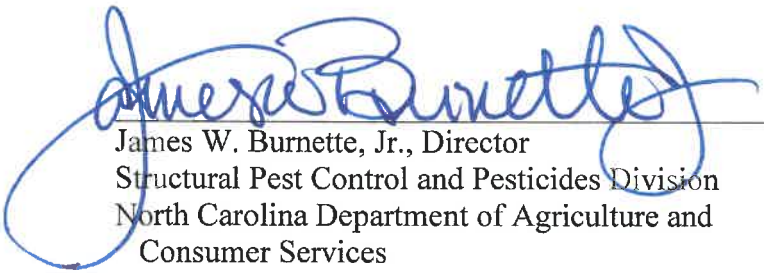


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Timothy R. Jedrey  
The Housing Authority, City of New Bern  
837 South Front Street  
New Bern, North Carolina 28562

10-12-15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/16/2015  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

16 Oct 2015  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10 day of November, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Timothy R. Jedrey,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Settlement was not negotiated

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-84

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JERRY T. ELLIOTT & ELLIOTT  
ENTERPRISES OF NC, INC.,

Respondents.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Jerry T. Elliott & Elliott Enterprises of NC, Inc., (Collectively, "Respondents").

1. At all times pertinent to this matter, Respondent Jerry T. Elliott (hereinafter, "Respondent Elliot") was president of Elliott Enterprises of NC, Inc., 12380 NC Highway 55 West, Dover, Craven County, North Carolina, and Respondent Elliott Enterprises of NC, Inc., ("Respondent EENC") is a corporation incorporated and existing under the laws of the State of North Carolina.
2. On October 28, 2013, during a routine inspection at the Town of Morehead City, Building & Grounds Department, Public Works Building, Complainant's inspector observed ten 50 pound bags of the restricted use pesticide TopChoice Insecticide (fipronil), EPA Reg. No. 432-1217, fiprol insecticide, Class III, Caution. Phillip L. Terry, manager, stated that the TopChoice Insecticide was purchased from Respondent Elliot and Respondent EENC.
3. The Pesticide Section's records indicate that neither Respondent Elliot nor anyone associated with Respondent EENC is licensed as a pesticide dealer.
4. Complainant's inspector met with Respondent Elliot at Respondent EENC's place of business, 12380 NC Highway 55 West, Dover, North Carolina. Respondent Elliott stated that his pesticide dealer's license expired in 1991. He said that he had sold the TopChoice Insecticide to the Town of Morehead City on September 18, 2013.

5. The sales invoice obtained from Respondent Elliott contained incomplete information.
6. Respondent Elliot said that he purchased the TopChoice Insecticide from Cardinal Chemicals in Kinston, North Carolina.
7. Complainant's inspector met with Julian E. Brown, warehouse manager, at Cardinal Chemicals, Inc., 1583 Highway 258 South, Kinston, North Carolina. Mr. Brown stated that Cardinal Chemicals sold twenty-four 50 pound bags of TopChoice Insecticide to Respondent Elliot of Respondent EENC on September 18, 2013. Mr. Brown said Charles F. White was responsible for the sale to Respondents.
8. Complainant's inspector contacted Mr. White and he confirmed that he was responsible for the sale made to Respondents on September 18, 2013.
9. On June 30, 2014, Complainant's inspector returned to Cardinal Chemicals and met with Mr. Brown. Complainant's inspector determined that Cardinal Chemicals also sold Respondents eight 50 pound bags of TopChoice Insecticide on May 31, 2013, and six 50 pound bags of TopChoice Insecticide on June 30, 2013. Mr. White was responsible for these sales to Respondents.
10. Complainant's inspector then met with Respondent Elliot at Respondent EENC. Respondent Elliot stated that he had purchased TopChoice Insecticide from Cardinal Chemicals in Kinston on May 31, 2013, and June 30, 2013. He said he sold the TopChoice he purchased on May 31, 2013, and June 30, 2013.
11. Respondent Elliot is currently licensed as a pesticide dealer.
12. As a result of its investigation, Complainant alleges that Respondents, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-448(a)---

(a) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this Part. A separate license and fee shall be obtained for each location or outlet from which restricted use pesticides are distributed, sold, held for sale, or offered for sale.

N.C. Gen. Stat. § 143-451(a)(3), (4) and (6)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;
- (4) Failed to pay the original or renewal license fee when due, and continued to sell restricted use pesticides without paying the license fee, or sold restricted use pesticides without a license;
- (6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection.

N.C.G.S. § 143-466(a)---

(a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by rule. The records shall be kept for a period of three years from the date of the application of the pesticide to which the records refer, and shall be available for inspection and copying by the Board or its agents at its request.

02 NCAC 09L .1305 (2), (3), (4), and (5)---

“All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (2) initials of sales clerk;
- (3) name of certified or licensed applicator;
- (4) certification or license number of certified or licensed applicator;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card.”

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondents agree to pay the sum of One Thousand Four Hundred Dollars (\$1,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondents acknowledge their right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondents agree that if they fail to pay the total agreed upon sum of One Thousand Four Hundred Dollars (\$1,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Four Hundred Dollars (\$1,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondents acknowledge their right to judicial review of the civil penalty assessment in paragraph 14(c) and waives said right by consenting to the terms of this Agreement. Respondents further agree that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Jerry T. Elliott

Jerry T. Elliott individually and as President of  
Elliott Enterprises of NC, Inc.  
12380 NC Highway 55 West  
Dover, NC 28526

10-8-15  
Date

James W. Burnette, Jr.

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

10/20/2015  
Date

Barry H. Bloch

Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

19 Oct 2015  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10 day of November, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY: Paul Layley  
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Jerry T. Elliott,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Jerry T. Elliott, Respondent  
Patrick N. Farquhar, Eastern Field Manager



BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-034

File No. IR2014-034

Respondent.

IR2014-034

6. On June 20, 2014, Inspector Eppele interviewed Mr. Pena-Perez who stated that he did apply Parazone 3SL to the field in question. Mr. Woody A. Ham is the certified applicator for Ham Farms.

7. Dr. Henry Wade looked at the photographs in this case and stated, "I reviewed this case, including the photos taken by Page Eppele on 6-4-14. To a reasonable degree of scientific certainty, the damage to the cherry tree on Walter Mercer's property was caused by paraquat."

8. **Pesticide Involved**

Parazone 3SL Herbicide (paraquat), EPA Reg. No. 66222-130, a postemergent, nonselective herbicide, Class I, Danger-Poison.

**Lab Results**

PE-017	Non-target vegetation	
Paraquat		0.56 ppm
PE-018	Non-target vegetation	
Paraquat		5.30 ppm
PE-019	Non-target vegetation	
Paraquat		0.86 ppm
PE-017	Target vegetation	
Paraquat		430 ppm

**Label Statements**

*Parazone 3SL:*

**"Environmental Hazards ... Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas."**

**Sensitive Areas**

**The pesticide must only be applied when the potential for drift to adjacent sensitive areas (e.g., residential areas, bodies of water, known habitat for threatened or endangered species, non-target crops) is minimal (e.g., when wind is blowing away from the sensitive areas).**

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S § 143-440. (b)---

"The Board may ... require the certification and recertification of private applicators, ... and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder ..."

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S § 143-456 (a) (2) (4) & (5)

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

"No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect."

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---


(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

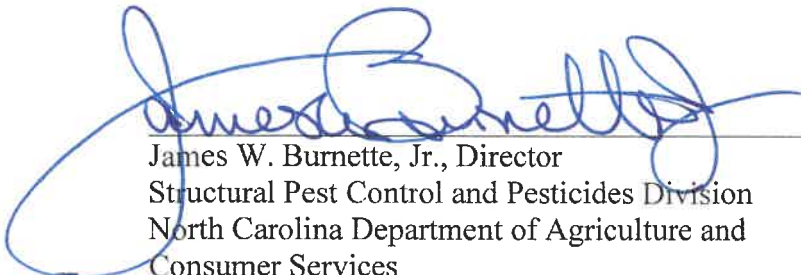
- (a) That Respondent agrees to pay the sum of Seven Hundred Dollars (\$700.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (b) That Respondent agrees that if he fails to pay the total agreed upon sum of Seven Hundred Dollars (\$700.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Seven Hundred Dollars (\$700.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

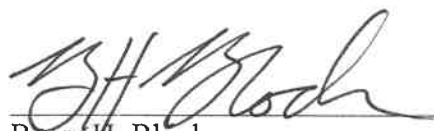
BY CONSENT:

  
\_\_\_\_\_  
Woody A. Ham  
Ham Farms, Inc.  
90 Ham Produce Road  
Snow Hill, North Carolina 28580

10/05/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

10/8/2015  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

7 October 2015  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10 day of November, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Bobby Ham

**Respondent,**

Supplemental Information

Settlement conference was held with Bobby Hamm of Ham farms. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-066

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

WILLIAM (BILL) P. WISE,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and William (Bill) P. Wise, Respondent.

1. At all times pertinent to this matter, Respondent, William (Bill) P. Wise, tends to Fraser Grover Tree Farm, PO Box 42, Plumbtree, NC 28664, and held N.C. Commercial Pesticide Applicator License no. 026-26758.

2. On Tuesday, September 2, 2014 Inspector Charles Clark was called to investigate a complaint filed by Mr. Gardner about possible pesticide drift to his mother's property located at 71 Garman Wise Lane, located off of Three Mile Rd in Avery County. Mr. Gardner was unable to meet with Insp. Clark due to work but they discussed the matter by phone.

3. Mr. Gardner stated that on Thursday August 28, 2014, in the evening and later, the trees next to his mother's property and his property had received a pesticide application and he felt that drift had occurred. He stated that the trees had been owned in the past by Charles Puckett. Mr. Gardner stated that he noticed a strong odor and his mother, Ms. Brenda Byrd, also complained about the smell. He also stated that the smell was so bad that it made them sick to their stomachs. He stated that none of his family had gone to the doctor due to this.

4. Insp. Clark advised Mr. Gardner to seek medical attention if he felt it was necessary. Mr. Gardner stated that he had had problems in the past due to pesticide applications made in this area. Mr. Gardner gave Insp. Clark permission to go onto his mother's property and take samples if needed. His mother, Ms. Byrd, was out of town during the visit.

5. Insp. Clark contacted Mr. Charles Puckett who stated that he had sold the trees from the land adjacent to the Gardner property to G & S Trees. He stated that he had sold most of his to them. He said that he had issues with Mr. Gardner in the past dealing with erosion on the road leading into the tree field. He stated that he had leased the land from Tim and Shawn Hartley.

6. Insp. Clark also contacted G & S Trees, located in Elk Park, NC. He spoke with owners, Mr. Cale Smith and Mr. Matthew Horney. They stated that they had used Bill Wise to make the pesticide application to the field next to the Gardner property.

7. Insp. Clark contacted Respondent by phone while Respondent was in Virginia working. Respondent stated that he sprayed next to the Gardner/Byrd property on August 8, 2014, from approximately 8:00 PM until shortly after dark. Respondent said he used a directed air blast sprayer to apply Sniper, Dimethoate and Maddog (glyphosate). He stated that the air was fairly still during the application. Respondent also stated that at the corner of the tree field nearest to the Gardner property, he directed the spray away from the houses.

8. Insp. Clark then went to the Gardner/Byrd property. Here he collected two swab samples: CC002 as a control only and CC003 from a window in the Byrd house facing the direction of the tree field. The window was located on the SE corner of house and is approximately 225 feet from the edge of tree field.

9. Insp. Clark then went in a southeasterly direction toward the tree field and collected a vegetation sample from a non- target area located approximately 150 feet from the Byrd house. A small wooded area separates the tree field from the Byrd property. He took sample CC004 in this area, facing the tree field. He then went into the tree field and collected sample CC005 as the target sample.

10. Insp. Clark contacted Mr. Gardner by phone and informed him about the samples that had been taken and what pesticides Respondent said he had applied. Insp. Clark also told the Respondent about the sampling, requested the spray records and an opportunity to inspect the sprayer Respondent used.

11.

**Pesticide Involved**

Sniper Insecticide,(bifenthrin), EPA Reg. No. 34704-858, Class II  
Warning Dimethoate Insecticide, (dimethoate), EPA Reg. No. 34704-  
207, Class II Warning Maddog Herbicide, (glyphosate), EPA Reg. No.  
34704-889, Class III Caution

**Label Statements**

Dimethoate Label States:

“Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”



## Sample Results

Sample No	Type	Location	Dimethoate	Bifenthrin	Glyphosate*
CC-2	Swab	Control	ND	ND	ND
CC-3	Swab	Byrd Home	0.090ug	ND	ND
CC-4	Vegetation	Non target	0.038ppm	0.53ppm	ND
CC-5	Vegetation	target	6.22ppm	21.0ppm	0.59ppm*

12. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

### Violations

N.C.G.S. §143-443 (b)(3) ----

It shall be unlawful:

“For any person to use any pesticide in a manner inconsistent with its labeling.”

N.C.G.S. §143-456(a) (2), (4), (5)

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;"

2NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(b)---


"A civil penalty of not more Two-thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article."

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

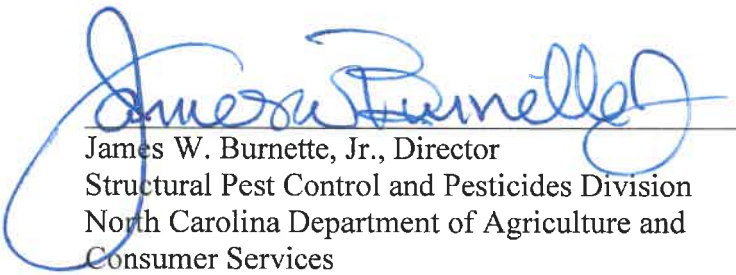
- (a) That Respondent agrees to pay the sum of Seven Hundred Dollars (\$700.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Seven Hundred Dollars (\$700.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Seven Hundred Dollars (\$700.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
William (Bill) P. Wise  
Fraser Grove Tree Farm  
Post Office Box 42  
Plumtree, North Carolina 28664

10-24-15  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

11/10/2015  
Date

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

10 NOV 2015  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10 day of November, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-66

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

DANNY W.WILLIAMS,  
Respondent.

# SETTLEMENT AGREEMENT

1. At all times pertinent to this matter, Respondent is the owner of a farm located at 2631 Highway 158 West, Oxford, North Carolina 27565, and held Private Applicator license No. 038-49662.

2. On August 19, 2013, Sergio Morales, bilingual specialist with the North Carolina Department of Agriculture Structural Pest and Pesticide Division, and Inspector William B. Dunn performed an inspection at the Respondent's farm. The inspection was performed due to a complaint received by Stephanie Martinez of the North Carolina Office of Rural Health and Community Care. Ms. Martinez received the complaint from Mr. Dario Cauazazon (Mr. Cauazazon), a seasonal H2A worker on Respondent's farm.

3. According to Ms. Martinez, Mr. Cauazazon reported that he and numerous other workers were exposed to some type of pesticide that was being applied to a tobacco field on July 20, 2013. Mr. Cauazazon told Ms. Martinez that he and the other workers were taking a break under a tree adjacent to a field in which they were working. Mr. Cauazazon said that another of Respondent's workers entered an adjacent tobacco field and began to apply some type of chemical. Mr. Cauazazon said that the worker was applying the chemical approximately 100 meters from where he and the other workers were located. Mr. Cauazazon told Ms. Martinez that the wind was blowing towards them and that the smell became overwhelming. He had difficulty breathing. After Ms. Martinez received this report and interviewed Mr. Cauazazon, she referred it to the Complainant's Pesticide Section.

4. Sergio Morales and Inspector Dunn met with Mr. Cauazazon at the Respondent's farm's housing area where Mr. Cauazazon was living. Mr. Cauazazon does not speak English fluently so Sergio Morales translated the questions Inspector Dunn asked.

5. Inspector Dunn interviewed Mr. Cauazazon about the incident on July 20, 2013. According to Mr. Cauazazon, the workers were taking a break under a shade tree adjacent to a field in which they had been working. Mr. Cauazazon said that a worker on a sprayer showed up in another field close to the one where they had been working. The worker began to spray some type of chemical. Mr. Cauazazon said that the wind was blowing towards them. He smelled a very strong odor as soon as the worker began to spray.

6. Mr. Cauazazon said they complained. One of the other H2A seasonal workers who spoke English told the worker who was making the application to stop spraying. The workers under the tree were having problems with the odor. The worker making the application was Eulis Evans (Eulis). He stopped spraying.

7. According to Mr. Cauazazon, the farm owner, Danny Williams (the Respondent), came to field some time later and wanted to know why the application was not being made. Eulis told him the workers had complained about the odor. The Respondent told Eulis to resume making the application because the chemical would not hurt them. The Respondent then told Mr. Cauazazon that if he did not want to work, he could leave.

8. Mr. Cauazazon said that he went back to work but he had difficulty breathing because of the odor coming from the adjacent field from the application and the heat of the day.

9. Mr. Cauazazon said that he later complained to the North Carolina Office of Rural Health and Community Care. Mr. Cauazazon said that he never went a doctor or medical facility to see if he had any adverse health conditions.

10. Inspector Dunn interviewed Alberto Cabrera next. Mr. Cabrera is also a H2A seasonal worker. He verified Mr. Cauazazon's statement about the application made on July 20, 2013.

11. Inspector Dunn interviewed Jymi Alberto Vazquez, another H2A seasonal worker. Mr. Vazquez also verified what Mr. Cauazazon has said about the July 20, 2013 application.

12. The Worker Protection Standard interviews with the other workers revealed:

Mr. Cauazazon, H2A seasonal worker/handler:

- Trained as a handler through the H2A workers' association and viewed the pesticide training video.
- Was not aware and had not seen the safety poster or a central notification site at the Respondent's farm.
- Was not aware of pesticide applications nor notified of any pesticide applications taking place. No application records are posted or available for him to view at the Respondent's farm.

- Received no Personal Protective Equipment. Mr. Cauazazon works as a handler (according to several labels of pesticides he used, chemical resistant gloves, chemical resistant footwear was needed). He was not provided rubber boots; he purchased rubber boots himself. His gloves were not completely waterproof due to cotton content. He had no access to emergency clean clothes provided by Williams' farm.
- There were no decontamination supplies (ex. Soap, water, paper towels) provided within one-quarter mile of Mr. Cauazazon.
- He stated that he believes Respondent hinders him from compliance with the Worker Protection Standard and would retaliate if he complains. Respondent had already told him to work when he felt like he was being exposed to pesticide fumes. Respondent told him to work or leave.

Jymi Alberto Vazquez, H2A seasonal worker/handler:

- Mr. Vazquez is trained as a handler through the H2A workers association and viewed the pesticide training video.
- He was not aware of nor had he seen a safety poster or a central notification site.
- He was not aware of pesticide applications and had not notified of any pesticide applications taking place. There were no application records posted or available for him to view.
- He received no Personal Protective Equipment. He works as a handler. According to several pesticide labels used by employee, chemical resistant gloves and chemical resistant footwear are needed) Worker received no rubber boots so he purchased some himself. Gloves that he received are not completely waterproof due to cotton content. There were no emergency clean clothes provided.
- Respondent provided no decontamination supplies (ex. Soap, water, paper towels) within one-quarter mile of employees' work places.

Alberto Cabrera H2A seasonal worker/handler:

- Mr. Cabrera is trained as a handler through the H2A workers association and viewed the pesticide training video.
- He was not aware of nor had he seen a safety poster or a central notification site.
- He was not aware of pesticide applications and had not notified of any pesticide applications taking place. There were no application records posted or available for him to view.
- No Personal Protective Equipment was provided to him. He works as a handler. According to several pesticide labels used by employee, chemical resistant gloves and chemical resistant footwear are needed) Worker received no rubber boots so he purchased some himself. Gloves that he received are not completely waterproof due to cotton content. There were no emergency clean clothes provided.
- Respondent provided no decontamination supplies (ex. Soap, water, paper towels) within one-quarter mile of employees' work places.

13. Inspector Dunn interviewed Respondent next. Respondent said he was familiar with the incident that had occurred on July 20, 2013. Respondent said he thought he had corrected the situation when it happened. Respondent said he would think the workers would have spoken to him instead lodging a formal complaint. Inspector Dunn interviewed the Respondent using the WPS Comprehensive Farm Checklist Form. The interviewed revealed several Worker Protection Standard deficiencies:

1. No central notification area present, no application records present, no EPA approved safety poster present.
2. Workers not notified of pesticide applications or REI time frames.
3. No decontamination supplies eyewash, soap, one use paper towels on hand for workers or handlers.
4. Employees have to provide their own rubber boots used for personal protective equipment (PPE) during applications.
5. Respondent did not provide or maintain PPE.
6. Respondent did not notify employees about to what types of chemicals are applied.
7. Respondent had no pesticide application records for the 2013 growing season.

14. Inspector Dunn interviewed Mr. Eulis Evans, the applicator who was performing the pesticide application on July 20, 2013. Mr. Evans said he remembered the application in question and that he was at least several hundreds of yards from where the workers were having a break under a tree. Mr. Evans said he was in a field adjacent to the field in which the workers had been working. Mr. Evans said he was at a level above where the workers were under the tree and that the wind direction was towards the tree. Mr. Evans said that he did stop applying until Respondent told him that the application would not hurt the workers.

15. Based on the results of our investigation, Complainant alleges that Respondent, either by acts or omissions, violated the following provisions of the North Carolina Pesticide Law and or/Regulations:

N.C.G.S. § 143-440(b)

"The Board may ... require the certification and recertification of private applicators ... and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; ..."

N.C.G.S. §143-443(b)(3) ---

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456(a)(2), (4) and (5)---

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;"

**§170.120 Notice of applications.**

(a) Oral warnings. The agricultural employer shall provide oral warnings to workers in a manner that the worker can understand. If a worker will be on the premises during the application, the warning shall be given before the application takes place. Otherwise, the warning shall be given at the beginning of the worker's first work period during which the application is taking place or the restricted-entry interval for the pesticide is in effect. The warning shall consist of:

- (1) The location and description of the treated area.
- (2) The time during which entry is restricted.
- (3) Instructions not to enter the treated area until the restricted-entry interval has expired.

**§170.122 Providing specific information about applications.**

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the location specified for the pesticide safety poster in §170.135(d) and shall be accessible and legible, as specified in §170.135 (e) and (f).

(b) Timing.

- (1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.
- (2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.
- (3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

- (1) The location and description of the treated area.
- (2) The product name, EPA registration number, and active ingredient(s) of the pesticide.
- (3) The time and date the pesticide is to be applied.
- (4) The restricted-entry interval for the pesticide.

**§170.150 Decontamination.**

(a)(1) Requirement. The agricultural employer must provide decontamination supplies for workers in accordance with this section whenever:

- (i) Any worker on the agricultural establishment is performing an activity in the area where a pesticide was applied or a restricted-entry interval (REI) was in effect within the last 30 days, and;
- (ii) The worker contacts anything that has been treated with the pesticide, including, but not limited to soil, water, plants, plant surfaces, and plant parts.



- (a) General conditions
  - (ii) The agricultural employer shall provide soap and single-use towels in quantities sufficient to meet worker's needs. □ □

**§ 170.160 Emergency assistance.**

If there is reason to believe that a person who is or has been employed on an agricultural establishment to perform task related to the production of agricultural plants has been poisoned or injured by exposure to pesticides used on the agricultural establishment, including, but not limited to, exposures from application, splash, spill, drift, or pesticide residues, the agricultural employer shall:

- (a) Make available to that person prompt transportation from the agricultural establishment, including any labor camp on the agricultural establishment, to an appropriate emergency medical facility.
- (b) Provide to that person or to treating medical personnel, promptly upon request, any obtainable information on:
  - (1) Product name, EPA registration number, and active ingredients of any product to which that person might have been exposed.
  - (2) Antidote, first aid, and other medical information from the product labeling.
  - (3) The circumstances of application or use of the pesticide on the agricultural establishment.
  - (4) The circumstances of exposure of that person to the pesticide.

**§170.222 Providing specific information about applications.**

When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, specific information about the pesticide.

(a) **Location, accessibility, and legibility.** The information shall be displayed in the same location specified for the pesticide safety poster in § 170.235(d) of this part and shall be accessible and legible, as specified in § 170.235(e) and (f) of this part.

(b) **Timing.**

- (1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.
- (2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any such handler's first work period.
- (3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until the handlers are no longer on the establishment, whichever is earlier.

(c) **Required information.** The information shall include:

- (1) The location and description of the treated area.
- (2) The product name, EPA registration number, and active ingredient(s) of the pesticide.
- (3) The time and date the pesticide is to be applied.
- (4) The restricted-entry interval for the pesticide.

**§170.240 Personal protective equipment.**

- (a) Requirement. Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.
- (e) Use of personal protective equipment
  - (1) The handler employer shall assure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

**§170.250 Decontamination.**

- (a) Requirement. During any handling activity, the handler employer shall provide for handlers, in accordance with this section, decontamination supplies for washing off pesticides and pesticide residues.
- (b) General conditions
  - (1) The handler employer shall provide handlers with enough water for routine washing, for emergency eyeflushing, and for washing the entire body in case of an emergency. At all times when the water is available to handlers, the handler employer shall assure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.
  - (3) The handler employer shall provide soap and single-use towels in quantities sufficient to meet handlers' needs.
  - (4) The handler employer shall provide one clean change of clothing, such as coveralls, for use in an emergency.
- (c) Emergency eyeflushing. To provide for emergency eyeflushing, the handler employer shall assure that at least 1 pint of water is immediately available to each handler who is performing tasks for which the pesticide labeling requires protective eyewear. The eyeflush water shall be carried by the handler, or shall be on the vehicle or aircraft the handler is using, or shall be otherwise immediately accessible.
- (e) Decontamination after handling activities. At the end of any exposure period, the handler employer shall provide at the site where handlers remove personal protective equipment, soap, clean towels, and a sufficient amount of water so that the handlers may wash thoroughly.

**02 NCAC 09L .1807 SPECIFIC INFORMATION ABOUT APPLICATIONS**

- (a) Concerning application information requirements contained in 40 CFR Sections 170.122 and 170.222 the following is also required to be completed by the agricultural employer:

(1) In addition to the requirements of Sections 170.122(c)(3), and 170.222(c)(3), the specific time of day when each pesticide application was completed must be recorded immediately upon completion of the application. Each day of the application shall be recorded as a separate record.

16. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

**N.C.G.S. §143-469(d)---**

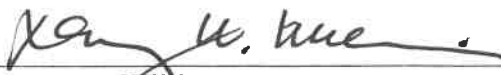
"Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500)."

17. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

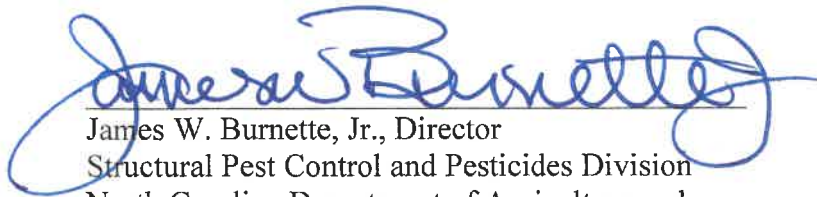
- (a) That Respondent agrees to pay the sum of One Thousand Two Hundred Fifty Dollars (\$1,250.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Fifty Dollars (\$1,250.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Fifty Dollars (\$1,250.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 17(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 17(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Danny W. Williams  
2631 Highway 158 West  
Oxford, North Carolina 27565

11/9/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

12/1/2015  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

13 NOV 2015  
\_\_\_\_\_  
Date

\*\*\*\*\*  
APPROVED AND ORDERED FILED,

this the 12 day of January 2015

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



2013-66

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Danny W. Williams

**Respondent,**

Supplemental Information

Settlement conference was held with Danny W. Williams. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-075

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
COLON RANDY GRAY, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Colon Randy Gray, Respondent.

1. At all times pertinent to this matter, Respondent held Certified Applicator License No. 038-64171 and resided at 750 Race Track Road, Lagrange, North Carolina 28551.
2. On August 4, 2013, Complainant's Inspector Brandon Cawthorn received a call from Mr. Bob Forsythe regarding concerns about possible drift or volatilization from a pesticide application to a nearby field which may have caused damage to the pine trees within his neighborhood in Goldsboro, North Carolina.
3. On August 5, 2013, Complainant's Inspector met with Mr. Forsythe to inspect the damage to the affected pine trees and noted that no other plants, including grass at the edge of the application area, were damaged.
4. Complainant's Inspector also noted during his investigation that the area holding the damaged trees extended well away from the field where the application had been made. Affected pine trees were across the street and on the other side of Mr. Forsythe's property.
5. Complainant's Inspector was informed that the field where the application was made is tended by Respondent. Respondent told Complainant's Inspector that he was aware of the damaged pine trees and had contacted the North Carolina Forestry Department for assistance and guidance regarding the health of the trees.

6. On August 9, 2013, Complainant's Inspector requested the Respondent's application records and access to his equipment. Respondent provided the records and access. Respondent also informed Complainant's Inspector that the pesticide he used was Gramoxone SL 2.0 mixed with Envive. Respondent said that he was concerned that the new formulation of Gramoxone may have caused the damage to the pine trees.

7. Dr. Henry Wade reviewed this investigation file and stated, "I reviewed this case, including photos taken by Brandon Cawthorn on September 9, 2013. The pine trees adjacent to the agricultural field that Randy Gray farms had lots of dead needles. Mr. Gray applied herbicides to the ag field on 7-18-13. To a reasonable degree of scientific certainty, the damage to the pine trees was caused by drift of these herbicides."

8. Complainant's Inspector determined the following pesticides were involved:

Gramoxone SL 2.0 Herbicide (paraquat dichloride), a nonselective, post-emergent herbicide, EPA Reg. No. 100-1431, Class I, Danger-Poison.

Envive Herbicide (chlorimuron ethyl, flumioxazin, thifensulfuron methyl), an herbicide for selective burndown and residual weed control in soybeans, EPA Reg. No. 352-756, Class III, Caution.

9. The label statements obtained by Complainant's Inspector read as follows:

*Gramoxone SL 2.0 Herbicide:*

**"Environmental Hazards ... Drift ...** Do not apply when weather conditions favor drift from treated areas."

*Envive Herbicide:*

**"Environmental Hazards ...** Do not apply when weather conditions favor drift from treated areas. ... **DIRECTIONS FOR USE ... IMPORTANT USE RESTRICTIONS** ... Do not apply during a temperature inversion, when winds are gusty, or when other conditions could produce poor coverage and/or offtarget spray movement."

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S § 143-440. (b)---

"The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder."

N.C.G.S. §143-443(b)(3)---

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(d)---

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;



- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Colon Randy Gray  
Colon Randy Gray  
750 Race Track Road  
Lagrange, North Carolina 28551

11/30/15  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

12/4/2015  
Date

Christopher R. McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

12/3/15  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12 day of January

NORTH CAROLINA PESTICIDE BOARD

BY: [Signature]  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Colon Randy Gray,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Colon Randy Gray, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-007

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
ROBERT C. BOYETTE, )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Robert C. Boyette, Respondent.

1. At all times pertinent to this matter, Respondent was the owner of Rock Ridge Farms, located at 6611 Luther Road, Wilson, North Carolina 27893. Respondent's Private Applicator License No. 038-40843 was expired at the time Complainant conducted this investigation. Complainant renewed Respondent's license on October 1, 2014.
2. On March 26, 2014, Complainant Inspector Barry Dunn investigated a pesticide drift complaint made by Ms. Louise Wall and her husband, Mr. Ritchie Wall. The Walls reported that the field across from their house had been sprayed that morning and it was very windy. They believed that whatever was being applied may have drifted into their yard.
3. The Walls told Complainant's Inspector that the sprayer was a John Deere and that the spray droplets were drifting in all directions. The Wall's property is approximately 40 feet from the target field. A friend of the Walls asked the applicator what pesticide he was spraying and was told that weed killer was being sprayed for Mr. Ricky Godwin.
4. On March 26, 2014, the Complainant's Inspector met with Mr. Godwin. Mr. Godwin told Inspector Dunn that he leased the field in question to Respondent, owner of Rock Ridge Farms.

5. Complainant's Inspector spoke to Respondent by phone and was told that his employee, Mr. Harold Harvey, applied Defy Amine 4 to the field in question on March 26, 2014. Respondent also told the Inspector that his employee, Mr. Thomas A. Cozart, Jr. is the certified applicator for Rock Ridge Farms. Mr. Cozart is no longer employed at Rock Ridge Farms.

6. On March 31, 2014, Complainant's Inspector met with Respondent and Mr. Harvey. Mr. Harvey told Inspector Dunn that he thought that the wind was blowing away from the Wall property at about 10 mph at the time of the application.

7. Complainant's inspector collected a vegetation sample from the Wall's property and two target samples:

BD-3 sample consist of approximately 1 pound of azalea vegetation taken from the property of Louise and Ritchie Wall. The sample was taken 20 feet SE from the edge of Old Beulah Road. This is a nontarget sample.

BD-4 sample consist of approximately 1 pound of broadleaf weed vegetation taken from a field directly across from the Wall home. The field is located directly northwest across Old Beulah Road from the Wall property. The sample was taken in the field 20 feet northwest from the edge of Old Beulah Road.

BD-5 sample consist of approximately 1 pound of soil taken from a field directly across from the Wall home. The field is located directly northwest across Old Beulah Road from the Wall property. The sample was taken in the field 20 feet northwest from the edge of Old Beulah Road.

8. The following pesticides were involved:

Defy Amine 4 Herbicide (2,4-D) Dichlorophenoxyacetic acid, dimethylamine salt.. 47.2 EPA Registration No. 66222-221

9. The following lab results were determined:

	<u>2,4-D</u>
BD-03 Non-target vegetation, Wall property	0.49 ppm
BD-04 Target vegetation, Boyette field	20 ppm
BD-05 Target soil, Boyette field	0.27 ppm

10. The label statement for the pesticide involved is as follows:

*Defy Amine 4 Herbicide:*

**“DIRECTIONS FOR USE ... SPRAY DRIFT MANAGEMENT ...**

**Wind speed** Only apply this product if the wind direction favors on-target deposition and there are not sensitive areas (including but not limited to residential areas, ... nontarget crops) within 250 feet downwind. ...

**Susceptible Plants** Do not apply under circumstances where spray drift may occur to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use, or consumption. ... Susceptible crops include but are not limited to ... ornamentals.

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S § 143-440. (b)---

"The Board may . . . require the certification and recertification of private applicators, . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . ."

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S § 143-456 (a) (2) & (5)

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-469(d)---

"Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations."

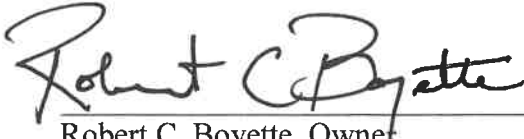
13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.

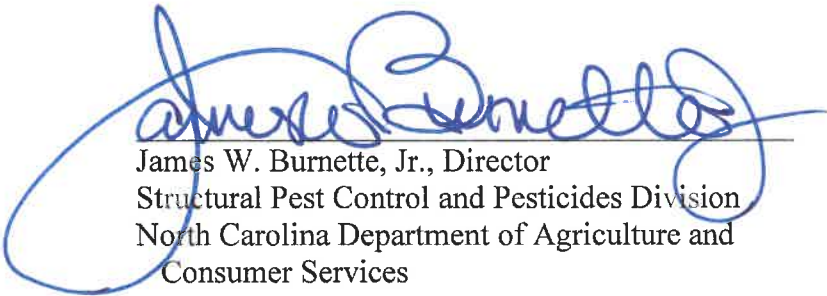
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Robert C. Boyette, Owner  
Rock Ridge Farms  
6611 Luther Road  
Wilson, North Carolina 27893

11-4-15  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

11/13/2015  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

12 NOV 2015  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12 day of January

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Robert C. Boyette,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Katelyn Boyette, Respondent's wife  
Jason H. Williams, Pesticide Specialist



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-021

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

RICKY NELSON HALL,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Ricky Nelson Hall, Respondent.

1. At all times pertinent to this matter, Respondent Ricky Nelson Hall was the owner of a farm, 3468 Barbwire Road, Roseboro, North Carolina 28382 and maintained a Private Applicator License No. 038-66474.
2. On May 16, 2014, our department received a complaint from Mr. George L. Ford, Jr. alleging Gramoxone drift onto his property from a nearby application.
3. On May 19, 2014, Complainant Inspector Jimmy Merritt met with Mr. Ford at his residence. Mr. Ford told Inspector Merritt that on May 13, 2014, he observed Mr. James Ray Hall spraying the large field adjacent to his property. Mr. Ford stated that the wind was blowing from the target field toward his property. Mr. Ford stated that Mr. James Ray Hall told him that he was applying Gramoxone. Mr. Ford also stated that, within a day or two, he saw his lawn grass turning brown and his sweet corn became burned and speckled across the entire field. Mr. Ford stated the only herbicide he used on his property this year was Roundup, which was applied in March around his plant beds.
4. On May 19, 2014, Inspector Merritt met with Mr. Ricky Hall and Mr. James Ray Hall at their farm maintenance building. Mr. Ricky Hall stated he has Private Applicator Certification No. 038-66474. He stated he farms with his brother, James Ray Hall. Mr. James Ray Hall told Inspector Merritt that he sprayed the field in question with Gramoxone as a burn down treatment in preparation to plant soybeans. Mr. James Ray Hall stated that he saw the drift damage the next

day and talked to George Ford and told him he would do whatever needed to make it right. Mr. James Ray Hall stated that at the time he was spraying, he did not think the wind was blowing hard enough to drift onto Mr. Ford's property.

5. Mr. James Ray Hall confirmed that on May 13, 2014, he applied Gramoxone SL 2.0 EPA Reg. No. 100-1431 at a rate of 2 qt. /A. Tractor speed was 5.5 mph and boom width was 48 ft. equipped with flat fan 8004 VS nozzles. He stated his operating pressure was 45-50 PSI with a boom height of 28 inches. He stated he added Scanner Non-Ionic Surfactant 1 qt./100 gal. Ricky Hall provided Inspector Merritt with Restricted Use application records.

6. Dr. Henry Wade looked at the photographs in this case and stated, "I reviewed this case, including the photos taken by Jimmy Merritt on 5-19-14. To a reasonable degree of scientific certainty, the damage to the lawn, corn, and pecan and Bradford pear trees on George Ford's property was caused by paraquat."

7. Complainant's inspector collected two non-target samples (JM-23, JM-24) and one target sample (JM-25):

**JM-023** Vegetation sample was collected from the non-target corn field. Corn plant leaves and stems were collected from 2-3 sq. ft. area. Sample site was 148 ft. SSE from woods edge and 25 ft. ENE of the property line.

**JM-024** Vegetation sample was collected from the non-target grass lawn. Grass was collected from a 2-3 sq. ft. area. Sample site was located 148 ft. SSE from the woods edge and 5 ft. ENE from property line.

**JM-025** Vegetation sample was collected from the target field. Weeds were collected from a 2-3 sq. ft. area. Sample site was in-line with JM-023 and JM-024 and located 22 ft. WSW from the property line.

8. The following pesticides were involved:

Gramoxone SL 2.0 Herbicide (paraquat dichloride), EPA Reg. No. 100-1431, a Bipyrldylum, contact, non-selective herbicide, Class I, Danger/Poison.

9. The label statements for the pesticides involved are as follows:

*Gramoxone SL 2.0 Herbicide:*

**"Environmental Hazards ... Drift ...** Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas."

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S § 143-440. (b)---

"The Board may . . . require the certification and recertification of private applicators, . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . "

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S § 143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

"No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect."

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-469(d)---

"Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations."


12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

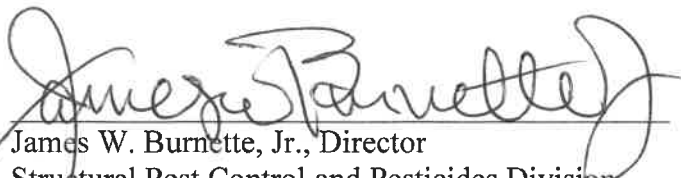
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Ricky Nelson Hall  
3468 Barbwire Road  
Roseboro, North Carolina 28382

1-4-2016  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

1-11-2016  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

1/7/16  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12 day of January, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Ricky Nelson Hall,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Ricky Nelson Hall, Respondent  
Patrick N. Farquhar, Eastern Field Manager

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-24

## SETTLEMENT AGREEMENT

3. Inspector Snodgrass drove to Donald Green's home, at 570 Lee Osborne Road, Lansing, NC 28643. Upon his arrival, Mr. Green provided him with a written statement describing what happened on May 24, 2014. Mr. Green stated that around 5:30 p.m., he and his wife started smelling a chemical odor inside their house. He said he went outside to investigate the smell and saw Charles Greer using a backpack sprayer/fogger to spray the fence line of a cemetery next to his property. He said that he could see the spray drifting towards his house. Mr. Green said Mr. Greer told him he was spraying Crossbow and to close up his house. Mr. Green said Mr. Greer used the sprayer to try and run him off by spraying it in his direction when he was questioning Mr. Greer. He said that it was a little windy, but not too bad when Mr. Greer was spraying. Mr. Green said Mr. Greer was just spraying it in a very careless manner. Mr. Green added that he

was keeping his granddaughters at the time and they were coughing and acting sick from the smell in the house. Mr. Green said he would probably take them to see a doctor if they didn't get any better. Mr. Green then showed Inspector Snodgrass around Pleasant Chapel Baptist Church and cemetery next to his house where Mr. Greer had sprayed.

4. Inspector Snodgrass noticed about 10 feet of weeds and non-grass vegetation around the outside of the cemetery fence that was wilted and dying. He estimated the distance from the fence line to Mr. Green's house to be approximately 150 feet. Mr. Green stated that he also owns the trailer immediately adjacent to the cemetery. He said it was currently empty, but he usually rents it out. He said his property goes all the way up to the fence where Mr. Greer had sprayed. He stated that he does not use any pesticides in or around his home or property.

5. Complainant's Inspector Snodgrass then proceeded to take samples:

- a) A control swab sample (TS-029) consisting of 10 swabs;
- b) A non-target swab sample (TS-030) consisting of 10 swabs taken from a screen window of Mr. Green's house, from the outside of the window screen on the north side of the house, in the kitchen, directly above the sink. The cemetery could be seen from the window. Mr. Green said the window was open when the application took place;
- c) A non-target vegetation sample (TS-031) consisting of approximately 2 pounds of grass was taken from Mr. Green's property, from directly beside a clothes line post next to Mr. Green's trailer and 23 feet from the fence line of the cemetery; and
- d) A target vegetation sample (TS-032) consisting of approximately two pounds of vegetation taken from the cemetery fence line of the cemetery, directly beside a support brace for an electric pole and one foot from the fence line.

6. Inspector Snodgrass then called the Respondent and told him about the investigation. Respondent confirmed that he had applied Crossbow to the cemetery fence line using a backpack fogger.

7. Respondent said he was a Christmas tree farmer and an employee of CPS in Jefferson, NC. He said that he was very aware of issues regarding pesticide licensing and drift.

8. Inspector Snodgrass asked Respondent whether he was paid to spray the cemetery. Respondent said that he is the caretaker of the cemetery but he is not paid for its upkeep. Respondent said that once a year during homecoming, the church takes up a collection for the cemetery and he uses the money to purchase supplies such as fences, gas for mowers, or herbicides.

9. Respondent said that he receives no compensation for his services and all the work he does at the cemetery is as a volunteer.

10. Respondent said he was unable to meet with Inspector Snodgrass any time soon due to his work schedule, but the fogger and container of Crossbow he used were on his back porch.

11. Inspector Snodgrass then traveled to Respondent's house at 2540 West Mill Creek Road, Warrensville, NC and photographed the backpack fogger and container of Crossbow.



12. Inspector Snodgrass made several calls and left messages for David Lyalls, the pastor of the church, to try to confirm Respondent's statement regarding being the cemetery caretaker. Mr. Lyalls never answered any of Inspector Snodgrass' calls or returned any messages.

13. On June 4, 2014, Inspector Snodgrass traveled to CPS in Jefferson, NC, and met with Respondent. Respondent holds a current Private Applicator's Certificate 038-77274.

14. Respondent said he did not intentionally spray Mr. Green or allow the Crossbow to drift onto his property. He said it was not very windy when he was spraying.

15. Inspector Snodgrass showed Respondent the label of Crossbow, pointing out the part about spray drift management.

16. Inspector Snodgrass recommended to the Respondent that he use a different sprayer, other than a fogger, when applying Crossbow. Inspector Snodgrass also recommended that Respondent be more careful when applying around the cemetery.

17. Respondent said he could not remember the exact amount used, but it was less than the label rate.

18. **SAMPLE INDEX**

TS-029 A control swab sample consisting of 10 swabs

TS-030 A non-target swab sample consisting of 10 swabs taken from a screen window of Mr. Green's house. The sample was taken from the outside of the window screen on the north side of the house, in the kitchen, directly above the sink. The cemetery could be seen from the window.

TS-031 A non-target vegetation sample consisting of approximately 2 pounds of grass taken from Mr. Green's property. The sample location was directly beside a clothes line post next to Mr. Green's trailer and 23 feet from the fence line of the cemetery.

TS-032 A target vegetation sample consisting of approximately 2 pounds of vegetation taken from the fence line of the cemetery. The sample location was directly beside a support brace for an electric pole and 1 foot from the fence line.

19. Complainant's Inspector found the following pesticides involved:

Crossbow, 2,4-dichlorophenoxyacetic acid butoxyethyl ester.....34.4%, triclopyr BEE: 3,5,6-trichloro-2-pyridinyloxyacetic acid butoxyethyl ester.....16.5%; EPA Reg. No. 62719-260-34704 Caution

**The Crossbow label states:**

Avoid Injurious Spray Drift Applications should be made only when hazards from spray drift are at a minimum. Very small quantities of spray, which may not be visible, may seriously injure susceptible plants. Do not spray when wind is blowing toward

susceptible crops or ornamental plants near enough to be injured. Spray drift can be reduced by adding a spray thickening agent such as Nalco-Trol, Liberate, Chem-Trol or equivalent to the spray mixture. If a spray thickening agent is used, follow all use recommendations and precautions on the product label. With ground broadcast equipment, drift can be reduced by keeping the spray boom as low as possible; by applying no less than 20 gallons of spray per acre; by keeping the operating spray pressures at the lower end of the manufacturer's recommended pressures for the specific nozzle type used (low pressure nozzles are available from spray equipment manufacturers); and by spraying when the wind velocity is low (follow state regulations). Avoid calm conditions which may be conducive to air inversions. In hand-gun applications, select the minimum spray pressure that will provide adequate plant coverage (without forming a mist). The use of a mist blower is not recommended.

### **Droplet Size**

When applying sprays that contain 2,4-D as the sole active ingredient, or when applying sprays that contain 2,4-D mixed with active ingredients that require a coarse or coarser spray, apply only as a coarse or coarser spray (ASAE standard 572) or a volume mean diameter of 385 microns or greater for spinning atomizer nozzles. When applying sprays that contain 2,4-D mixed with other active ingredients that require a medium or more fine spray, apply only as a medium or coarser spray (ASAE standard 572) or a volume mean diameter of 300 microns or greater for spinning atomizer nozzles.

20. The pesticide residue analysis of the samples were as follows:

Sample	Location	Type	Triclopyr	2,4-D	2,4-D Ester	Triclopyr BEE	Triclopyr Ester
TS-29	Swab	Control	ND	ND	ND	ND	ND
TS-30	Swab	Window	ND	ND	ND	ND	ND
TS-31	Vegetation	Green	.20ppm	.60ppm	ND	ND	ND
TS-32	Vegetation	Cemetery	16.0ppm	43.0ppm	ND	ND	ND

21. Based on the results of our investigation, there is reason to believe that your acts and /or omissions violated the following provisions of the North Carolina Pesticide law and /or Regulations:

N.C.G.S. § 143-440(b)

(b) "The Board may ... require the certification and recertification of private applicators ... and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; ..."

N.C.G.S. §143-443 (b)(3) ----

(b) It shall be unlawful:

(3) "For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S. §143-456(a)(2) & (5)

- (a) "The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:
  - (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
  - (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board."

Each of the above violations of the North Carolina Pesticide Law and/or regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S.. §143-469(d)---

"A civil penalty of not more than Two Thousand Dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article."

22. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Six Hundred Dollars (\$600.00) in six (6) payments of One Hundred Dollars (\$100.00) each. Respondent's first payment of One Hundred Dollars (\$100.00) shall be due within thirty (30) days of the date the Board approves this Agreement. Respondent's remaining five (5) installment payments shall be due at sixty (60) day intervals, with the second payment falling due sixty (60) days after Respondent's first payment becomes due. Each subsequent payment shall be due sixty (60) days after its preceding payment. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Six Hundred Dollars (\$600.00) as provided herein may subject him to further disciplinary action as provided by G.S. § 106-65.28;

(b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;

(c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

(d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) per the payment installment plan, with the first payment received

within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

(e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 22(d) and waive said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 22(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Charles W. Greer  
Charles W. Greer  
2540 West Mill Creek Road  
Warrensville, North Carolina 28693

12/9/15  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

12/16/2015  
Date

Christopher R. McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

12/16/15  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12 day of January, 2016

NORTH CAROLINA PESTICIDE BOARD

BY: Allen Griffin  
Chairman



2014-24

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Charles W. Greer

**Respondent,**

Supplemental Information

Settlement conference was held with Charles Greer with Dwight Seal. Respondent agreed to settlement to pay civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-025

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

CHRISTOPHER K. HEDGPETH,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Christopher K. Hedgpeth, Respondent.

1. At all times pertinent to this matter, Respondent, Christopher K. Hedgpeth, was the responsible licensee (Applicator License No. 026-6930) for FCI, Inc., located at 2274 St. Pauls Road, Raeford, North Carolina 28376.
2. On May 28, 2014, Complainant's Inspector Doug Bullard investigated a complaint by Mr. David Skomra. Mr. Skroma said that a pesticide application made to the hay field adjacent to his property on April 24, 2014 by FCI, Inc., caused damage to the ornamental plants on his property.
3. While interviewing Mr. Skomra, Complainant's Inspector obtained photographs of the damaged plants and took samples of the non-target plants. Inspector Bullard also obtained samples of the soil and vegetation in the target area.
4. That same day, Complainant's Inspector went to FCI, Inc., in Raeford. There he spoke to Mr. Alfred Leach and Mr. Walter Britt regarding the application on April 24, 2014 to the hay field adjacent to Mr. Skomra's property. Mr. Leach provided Complainant's Inspector with a copy of the application record. The record stated that Simazine and 2,4-D was applied on April 24, 2014 by Mr. Joey Jacobs, an FCI employee. At the time of application, the wind was Northeast at 8+ mph.

5. On June 3, 2014, after further investigation, Complainant's Inspector determined that the application in question was not performed by Mr. Joey Jacobs, but rather by the Respondent, the responsible licensee for FCI, Inc.

6. Dr. Henry Wade looked at the photographs in this case and stated, "I reviewed this case, including photos taken by Doug Bullard on 5-28-14. To a reasonable degree of scientific certainty, the damage to the blueberry and ornamental plants was caused by 2,4-D."

7. Complainant's Inspector determined the following pesticides were involved:

Drexel Simazine 4L Herbicide (simazine), EPA Reg. No. 19713-60, a triazine herbicide, Class III, Caution.

2,4-D Amine Weed Killer (2,4-D), EPA Reg. No. 1386-43-72693, a chlorinated phenoxy herbicide, Class I, Danger/Poison.

8. The lab results revealed the following:

	<u>Simazine</u>	<u>2,4-D</u>
DB-41 Non-target vegetation, Skomra yard	ND	0.015 ppm
DB-42 Target soil, Pittman hayfield	2.1 ppm	0.022 ppm
DB-43 Target vegetation, Pittman hayfield	4.8 ppm	110 ppm

9. The label statements obtained by Complainant's Inspector read as follows:

*Drexel Simazine 4L Herbicide:*

Not labeled for application to pastures

*2,4-D Amine Weed Killer:*

**"DIRECTIONS FOR USE** ... Do not apply directly to vegetables, flowers, grapes, fruit trees, ornamentals, cotton or other desirable plants which are sensitive to 2,4-D and do not permit spray mist to drift onto them since even minute quantities may cause severe injury during the growing or dormant periods. ...

**SPRAY DRIFT MANAGEMENT** ... Only apply this product if the wind direction favors on-target deposition and there are not sensitive areas (including, but not limited to, residential areas, bodies of water, known habitat for nontarget species, nontarget crops) within 250 feet downwind."

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."



N.C.G.S §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

"No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect."

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(b)---

"A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article."

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(d) may be instituted based on the civil penalty assessment contained in paragraph 12(d) of this Agreement.

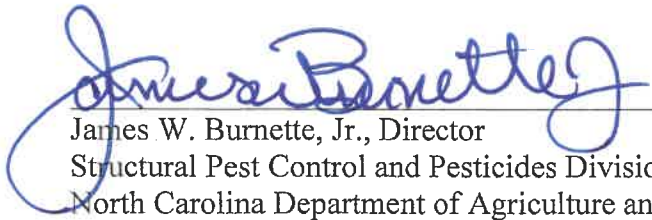
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Mr. Christopher K. Hedgpeth  
FCI, Inc.  
2274 St. Pauls Road  
Raeford, North Carolina 28376

11-18-15  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

11/25/2015  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

23 NOV 2015  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12 day of January, 2015

NORTH CAROLINA PESTICIDE BOARD

BY:  Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Christopher K. Hedgpeth,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Christopher K. Hedgpeth, Respondent

Patrick N. Farquhar, Eastern Field Manager

-v-

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-026

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
DAVID V. WALTON, )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and David V. Walton, Respondent.

1. At all times pertinent to this matter, Respondent, David V. Walton, operated a farm owned by Herschel Edge, located at 5465 NC 20 West Lumber Bridge, North Carolina 28357, and held Private Applicator License No. 03-28587.
2. On May 30, 2014, Complainant's Inspector, Jimmy Merritt, received a call from County Extension Services (CES) Agent, Ryan Harrelson, regarding an alleged Gramoxone spray drift from a farm to a residence on May 26, 2014, which resulted in Mr. Randy Priest's daughter being taken to a medical facility.
3. On May 30, 2014, Complainant's Inspector contacted Respondent. Respondent admitted he was aware of the herbicide drift incident and had seen that the burn down treatment drifted onto an adjacent corn crop. Respondent denied any knowledge that there was drift damage to any other property. Respondent stated that the target field was treated with Gramoxone SL 2.0 and Crossfire crop oil in preparation for planting soybeans. Respondent indicated that Mr. Tony Clark was the applicator.
4. Complainant's Inspector also met with Mr. Zachery Walton, Respondent's son, and Mr. Tony Clark, at the Walton farm shop. Mr. Clark stated that he applied Gramoxone SL 2.0 plus Crossfire crop oil to the field in question.

5. On June 2, 2014, Complainant's Inspector collected vegetation samples from the target area and non-target areas, including the Priest yard, J.R. Allen's corn, and the Lopez's yard.

6. On June 05, 2014, Complainant's Inspector received a call from Mr. Jack Walton Grimes regarding drift on his property which is located approximately two miles from Mr. Priest's property. Mr. Grimes told the Inspector that the field adjacent to his property is owned by Herschel Edge and that the grower who leases the farm sprayed a burn down treatment on May 27, 2014, and it damaged pecan trees and other plants on his property.

7. Inspector Merritt contacted Respondent and discussed the complaint and Respondent stated that Mr. Clark was the applicator for that site as well.

8. The lab results show the following:

	<u>Paraquat</u>
JM-29 Non-target vegetation, Priest property	1.38 ppm
JM-30 Non-target vegetation, Priest property	3.10 ppm
JM-31 Non-target vegetation, Jim Allen corn	ND
JM-32 Non-target vegetation, Lopez property	32.6 ppm
JM-33 Target vegetation, Walton field #1	127 ppm
JM-34 Target soil, Walton field #1	2.59 ppm
JM-35 Target vegetation, Walton field #1	544 ppm
JM-36 Target soil, Walton field #1	3.59 ppm
JM-37 Non-target vegetation, Grimes property	BQL<2.1 ppm
JM-38 Target vegetation, Walton field #2	49.3 ppm
JM-39 Target soil, Walton field #1	3.08 ppm

#### Label Statements

*Gramoxone SL 2.0 Herbicide:*

**"Environmental Hazards ... Drift ...** Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas."

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S § 143-440. (b)---

"The Board may...require the certification and recertification of private applicators,... and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder ..."

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S § 143-456 (a) (2) & (5)

“The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

“No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.”

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board’s approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board’s approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Mr. David Verne Walton  
5465 NC 20 West  
Lumber Bridge, North Carolina 28357

11/10/15  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

11/13/2015  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

12 NOV 2015  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12 day of January, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

David V. Walton,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

David V. Walton, Respondent  
Patrick N. Farquhar, Eastern Field Manager



BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-027

File No. IR2014-027

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5. On June 4, 2014, Complainant's Inspector inspected Mr. Mercer's property and collected a non-target sample of vegetation from cherry trees in the yard. Inspector Bullard also collected soil sample from the field where the application was made.

6. On that same day, Complainant's Inspector met with Mr. Zack Bissette and Respondent. During the meeting, Respondent provided records for the application in question. The records show that an application of Gramoxone Max was made on May 31, 2014, although Respondent stated that Gramoxone SL 2.0, EPA Reg. No. 100-1431 was actually applied.

7. The records also reflected that Mr. Juan Leo Montoya was the supervised applicator who made the application. Complainant's Inspector spoke with Mr. Montoya. Mr. Montoya confirmed that he did make the application.

8. Dr. Henry Wade looked at the photographs in this case and stated, "I reviewed this case, including the photos taken by Doug Bullard on 6-4-14. To a reasonable degree of scientific certainty, the damage to the cherry tree on Walter Mercer's property was caused by paraquat."

9. The lab results revealed the following:

	<u>paraquat</u>
DB-44 Non-target vegetation, Mercer property	ND
DB-45 Target vegetation, Bissette field	13.4 ppm

10. The pesticide label read as follows:

*Gramoxone SL 2.0 Herbicide:*

**"Environmental Hazards ... Drift ...** Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas."

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S §143-440(b)---

"The Board may...require the certification and recertification of private applicators,...and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . ."

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S §143-456(a)(2) (4) & (5)

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

"No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect."

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(d)---

"Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations."

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.

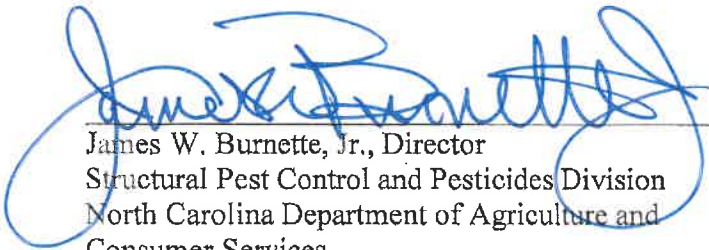
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Christopher J. Bissette  
Zackly Rite Farms  
6111 Hwy 58 North  
Elm City, North Carolina 27822

11/13/15  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

12/11/2015  
Date



Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

10 DEC 2015  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12 day of January

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Christopher Jason Bissette,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Settlement was not negotiated

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-28

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
 )  
Complainant, )  
 )  
v. )  
 )  
ROGER D. SLAUGHTER, )  
 )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Roger D. Slaughter, Respondent.

1. At all times pertinent to this matter, Respondent was the owner of S&S Lawnscape, LLC, located at 740 4<sup>th</sup> Ave. Place SE, Hickory, North Carolina, and held license No. 026-7014.
2. On May 12, 2014, Complainant's Inspector Travis Snodgrass received a phone call and an e-mail from Catawba County Extension Agent, Kelly Groves. Ms. Groves said that Barbara Hightshue of Conover, North Carolina, had questions about curling on her birch trees. Ms. Groves said that she had looked at Ms. Hightshue's trees and felt that it was 2, 4-D injury. Inspector Snodgrass told Ms. Groves that he would visit Ms. Hightshue and investigate the possible injury to her trees.
3. Inspector Snodgrass called and spoke with Ms. Hightshue. She said she had two birch trees with curled leaves which were turning yellow and falling off. She also said that a lawn care company had recently sprayed near the trees. Inspector Snodgrass then made arrangements to meet with Ms. Hightshue.
4. On May 15, 2014, Inspector Snodgrass visited Barbara Hightshue at her home at 3775 Sarazen Court NE, Conover, North Carolina 28613, Ms. Hightshue's house is in a small development called Sarazen Court located in Rockbarn Golf & Spa.

5. Ms. Hightshue showed Inspector Snodgrass her back yard, a small area of grass with landscaped borders, containing several species of ornamental trees and shrubs on both sides of her yard. Inspector Snodgrass noted two birch trees located on each side of the grass area. The foliage on both of the trees was curled, yellowing, and falling off the trees.

6. Inspector Snodgrass did not notice any other tree in Ms. Hightshue's property showing the same injury.

7. One of Ms. Hightshue's birch trees was located directly behind her back porch. Inspector Snodgrass walked up the steps to the porch, which was approximately twenty feet above the ground. Inspector Snodgrass noticed the leaves at that level were also curled and distorted, but the yellowing appeared to be located closer to the ground, about ten feet up.

8. Inspector Snodgrass walked around the rest of Ms. Hightshue's property looking at each shrub. He noticed a forsythia bush that was curled and distorted. The forsythia was located near the edge of a bed and immediately adjacent to the grass. The side of the forsythia facing the grass appeared to have more curling on the foliage than the back side of the bush.

9. Ms. Hightshue said she had not applied any pesticides outside on her property. She said Roger Slaughter with S & S Lawnscape (the Respondent) was the applicator and individual responsible for the grounds at Sarazen Court. She said he is under contract with the property owner's association. She stated that she had no control over how S & S Lawnscape maintained her property.

10. Ms. Hightshue said she did not want a full investigation and did not want Inspector Snodgrass to upset the other property owners by doing one. She requested that Inspector Snodgrass talk to Respondent and ask him to be more careful when he or his employees apply pesticides. Ms. Hightshue said the Respondent's crews go too fast when spraying and do not take time to prevent drift.

11. Ms. Hightshue asked Inspector Snodgrass whether her trees would die. He answered that he could not make a prediction. He gave her the contact information for Dr. Henry Wade, the Complainant's Environmental Programs Manager. Complainant's Inspector asked that she speak with him regarding the possibility of the trees dying as a result of the herbicide application.

12. Complainant's Inspector traveled to the office of S & S Lawnscape, LLC, located at 2610 Main Ave Drive NW, Hickory, NC 28602, and met with the owner, the Respondent. He informed the Respondent of Ms. Hightshue's complaint. Respondent said that his crews had applied Battleship to the Sarazen properties on May 6, 2014. Respondent showed Inspector Snodgrass the Ground Logic sprayer he used. Respondent said the sprayer was recently calibrated for an output of 31 ounces per 1,000 sq. ft. Respondent said they used a rate of 1.2 ounce per 1,000 sq. ft.

13. Complainant's Inspector looked at the boom underneath the machine. It contained three nozzles. Each was a TeeJet coarse mist nozzle. Respondent said the sprayer is designed to prevent drift with the canopy over the boom. Inspector Snodgrass estimated the boom as being six inches from the ground.

14. Inspector Snodgrass and the Respondent reviewed the Battleship label, specifically the section titled "Spray Drift Management."

15. Inspector Snodgrass cautioned the Respondent against applying a 2, 4-D product during warm temperatures. Respondent replied that they pick and choose cooler days to apply 2, 4-D products.

16. Inspector Snodgrass informed the Respondent that Ms. Hightshue did not want to pursue a full investigation into this matter and that he needed to be more careful and prevent any off target drift. Respondent said he would go and meet with Ms. Hightshue and ensure her that he would discuss her concerns with his crews.

17. Inspector emailed several pictures of the damaged vegetation he found at Ms. Hightshue's residence and a brief summary of his investigation to the Complainant's office for review by Dr. Henry Wade. He called Dr. Wade and they discussed the possible causes of the damage. Dr. Wade said the damage appeared to be from phenoxy herbicide exposure.

18. Inspector Snodgrass asked Dr. Wade to answer Ms. Hightshue's questions about the possibility of her trees dying.

19. On May 23, 2014, Dr. Wade forwarded Inspector Snodgrass an e-mail he had received from Ms. Hightshue.

20. On May 30, 2014, Inspector Snodgrass received a phone call from Ms. Hightshue. She said she was very upset that Respondent had failed to meet with her and discuss her concerns. Complainant's Inspector informed her that he would call and forward her concerns to Respondent. He immediately called and spoke with Respondent and informed him that Ms. Hightshue was very unhappy that he had failed to contact her regarding her inquiry. Respondent said he would make plans to meet with her as soon as possible.

21. On June 9, 2014, Inspector Snodgrass received another call from Ms. Hightshue. She said Respondent had met with her, but she was very upset with the way he had talked to her. She said Respondent told her he had done nothing wrong and they would not be doing anything different when spraying around her house. Ms. Hightshue said she felt that an investigation into what had happened may be the only thing that would get Respondent's attention. She also said she had noticed several other trees within the Sarazen area that were showing the same symptoms as her birch trees. Inspector Snodgrass informed her that he would revisit and obtain samples.

22. On June 12, 2014, Inspector Snodgrass returned to Sarazen Court and drove around the area. He noticed several different species of trees exhibiting the same injury as Ms. Hightshue's birch trees. Several maple trees near the front entrance were curled around the lower canopy of foliage and several dogwoods in the corner of Sarazen Court next to Rock Bridge Drive were also curled around the lower canopy of foliage. Across Rock Bridge Drive another group of dogwoods located on the golf course, outside the Sarazen Court area were not showing any signs of injury.



23. Inspector Snodgrass met with Curtis Macemore, the spray technician for Rockbarn Golf Course. Mr. Macemore confirmed that the second group of dogwood trees were on the golf course property and not maintained by S & S Lawnscape. Mr. Macemore said he had never sprayed pesticides on the Sarazen Court properties. He said he is responsible for all five pesticide applications which take place on the golf course. He said the closest he had sprayed on the golf course to any of the properties was almost 400 yards.
24. Inspector Snodgrass took three non-target vegetation samples and one target soil sample. (See Sample Index below)
25. On June 13, 2015, Inspector Snodgrass returned to Respondent's office and met with Chris Slaughter, the applicator who had sprayed the properties at Sarazen Court. Mr. Slaughter said he did not use Battleship; he used Speedzone for that application. Mr. Slaughter said he was unsure why his father, the Respondent, had said they used Battleship.
26. Mr. Slaughter said he was careful when spraying, but some mist from the application may have blown into the flower beds or around the trees. Mr. Slaughter said he used a rate of 1.1 ounce per 1,000 sq. ft. He said he had discussed with his dad about using a backpack sprayer or applying a granule herbicide around Ms. Hightshue's flower beds in the future due to her complaint.
27. Weather data for May 6, 2014 was taken from the nearest weather station located at the Hickory Regional Airport using the website [www.wunderground.com](http://www.wunderground.com). The airport is located approximately ten (10) miles west of Rockbarn.
28. Complainant's Inspector collected the following samples:

#### **SAMPLE INDEX**

TS-33 A non-target vegetation sample consisting of approximately one (1) pound of foliage collected from the lower canopy of a Dogwood tree located within Sarazan Court and next to Rock Bridge Drive. The sample was collected from foliage six (6) feet off the ground and appeared curled and damaged.

TS-34 A non-target vegetation sample consisting of approximately one (1) pound of foliage collected from a Forsythia bush located in a flower bed behind Ms. Hightshue's house. The sample was collected from foliage one (1) foot inside the flower bed and away from the grass and target site. The foliage collected appeared curled and damaged.

TS-35 A non-target vegetation sample consisting of approximately one (1) pound of foliage collected from the lower canopy of the Birch tree located behind Ms. Hightshue's house and back porch. The sample was collected from foliage six to seven (6-7) feet off the ground and appeared curled, yellow, and damaged.

TS-36 A target soil sample collected from grass located behind Ms. Hightshue's house. The sample site was located underneath the canopy of the Birch tree and six (6) feet from its trunk.

## PESTICIDES INVOLVED

Battleship III Selective Herbicide; Dimethylamine Salt of 2-Methyl-4-Chlorophenoxyacetic Acid...37.84%, 1-Methylheptyl Ester of Fluroxypyr: ((4-amino-3-5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic Acid, 1-methylheptyl ester...4.45%, Triethylamine Salt of 3,5,6-Trichloro-2-Pyridinyloxyacetic Acid...4.07%; EPA Reg. No. 228-453-5905 Danger

Speedzone Broadleaf Herbicide, Carfentrazone-ethyl...0.62%, 2,4-D, 2-ethylhexyl ester...28.57%, Mecoprop-p acid...5.88%, Dicamba Acid...1.71%; EPA Reg. No. 2217-833 Caution. Battleship III Selective Herbicide; Dimethylamine Salt of 2-Methyl-4-Chlorophenoxyacetic Acid...37.84%, 1-Methylheptyl Ester of Fluroxypyr: ((4-amino-3-5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic Acid, 1-methylheptyl ester...4.45%, Triethylamine Salt of 3,5,6-Trichloro-2-Pyridinyloxyacetic Acid...4.07%; EPA Reg. No. 228-453-5905 Danger

Speedzone Broadleaf Herbicide, Carfentrazone-ethyl...0.62%, 2,4-D, 2-ethylhexyl ester...28.57%, Mecoprop-p acid...5.88%, Dicamba Acid...1.71%; EPA Reg. No. 2217-833 Caution.

29. Based on the results of our investigation, Complainant alleges that Respondent, either by acts or omissions, violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-440(b)---

(b) The Board may...require the certification and recertification of private applicators, ...and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C.G.S. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

2 NCAC. Code 9L .1404---

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469(d)---

- (d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

30. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 30(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(d) may be instituted based on the civil penalty assessment contained in paragraph 30(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Roger D. Slaughter  
Roger D. Slaughter  
S&S Lawnscape  
740 4th Avenue Place SE  
Hickory, North Carolina 28602

11-20-2015  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

11/25/2015  
Date

Barry H. Bloch  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

24 NOV 2015  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12 day of January

NORTH CAROLINA PESTICIDE BOARD

BY:

Chairman  
Chairman



2014-28

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Roger D. Slaughter

**Respondent,**

Supplemental Information

Settlement conference was held with Roger D. Slaughter. Respondent agreed to civil penalty with discussion.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-32

# SETTLEMENT AGREEMENT

4. Mr. Cagle said that, on Saturday June 14, 2014, he was hosting a wedding party while Mr. Dellinger was spraying a field near the front of his vineyard across John Beam Road. Mr. Cagle said the smell from the spray was so strong that the party had to move off of the front outside deck to inside the winery. He said no one got sick from the smell, but his customers weren't happy with the experience.

5. Inspector Snodgrass then met with one of Mr. Cagle's employee, Rolly Galletto. Mr. Galletto said that Mr. Dellinger had been spraying around the vineyard recently. He said every time Mr. Dellinger sprays he can smell the chemical outside in the vineyard.

6. Inspector Snodgrass and Mr. Cagle walked around the area. Inspector Snodgrass did not notice any injury to the grapevines located at the front of the vineyard. They were lush and green with new vegetative growth. Inspector Snodgrass and Mr. Cagle then walked to the back of the vineyard where Mr. Cagle said the damaged grapevines were located. Inspector Snodgrass noticed that the new growth in the back was curled and distorted. The injury was more prevalent near the fence line which separated Mr. Cagle's vineyard and Mr. Dellinger's pasture. Inspector Snodgrass also noticed several weeds along the fence curled and dying. Mr. Cagle said the fence was the property line between the vineyard and pasture.

7. Mr. Cagle said Mr. Dellinger's boom sprayer was too high off of the ground, which allowed the herbicide to drift onto his property. He said he installed a flag pole with a large American flag to help Mr. Dellinger determine the wind speed and direction when spraying. Mr. Cagle stated that the wind typically blows across Mr. Dellinger's field towards his vineyard. Inspector Snodgrass measured the distance from the fence to the first row of grapes as 12 feet and the distance between each row of grapes as 11 feet.

8. Inspector Snodgrass took samples:

(TS-037) A non-target vegetation sample consisting of approximately one (1) pound of twisted and curled grape leaves was taken from the fourth row of grapes from the fence. The sample was taken 45 feet from the fence line. A non-target vegetation sample (TS-038) consisting of approximately one (1) pound of twisted and curled grape leaves was taken from the first row of grapes from the fence. The sample was taken 12 feet from the fence line.

(TS-038) A non-target vegetation sample consisting of approximately 1 pound of twisted and curled grape leaves taken from the first row of grapes from the fence. The sample was taken 12 feet from the fence line.

(TS-039) A nontarget soil sample consisting of approximately 16 ounces of soil located directly underneath a grape vine with twisted and curled leaves was taken from the first row of grapes and 125 feet from the end of the row on the south side of the field. The sample was taken 12 feet from the fence line. A control swab sample (TS-040) consisting of five (5) swabs was taken.

TS-040 A control swab sample consisting of 5 swabs.

(TS-041) A non-target swab sample consisting of 12 swabs was taken three (3) feet from the ground on the woody side of a grapevine located in the first row and immediately adjacent to the gate on the fence. The foliage on the grapevine where the sample was taken was twisted and curled. The sample was taken 12 feet from the fence line and gate.

(TS-042) A target soil sample consisting of approximately 16 ounces of soil located next to dead thistles was taken from inside the pasture. The sample was taken one (1) foot inside the pasture. Mr. Cagle said he does not apply any herbicides on or around the vineyard other than Buccaneer (Glyphosate). He said he uses a small sprayer with a covered shield to spray. Inspector Snodgrass inspected his storage and did not see any herbicides except for Buccaneer.

9. Inspector Snodgrass then called and talked with Respondent's son, Timothy Dellinger. Mr. Timothy Dellinger holds a current Private Applicator's Certificate 038-79491. He said he had applied a generic Weedmaster to the fence rows in the pasture next to Mr. Cagle's grapes a couple of weeks ago. He said he used a hand-held sprayer to touch up areas where his dad had missed with the larger tractor sprayer. He said he was careful and did not allow it to drift onto Mr. Cagle's grapes.

10. Later that day, Inspector Snodgrass received a phone call from Respondent. He said he had applied a combination of generic Weedmaster and Roundup to the field across the winery on John Beam Road on Saturday June 16, 2014, using a tractor boom sprayer. He said it didn't have that strong of a chemical smell to run Mr. Cagle's customers inside. He also said he had applied only generic Weedmaster to the field next to the back of Mr. Cagle's vineyard. He said he was unsure of the date when he sprayed his back field, but would look it up for Inspector Snodgrass. Inspector Snodgrass and Respondent then agreed to meet the following week.

11. On June 23, 2014, Inspector Snodgrass traveled to Respondent's home located at 1650 John Beam Road, Vale, North Carolina 28168. Respondent said he sprayed sometime during the last week of May in the pasture next to Mr. Cagle's grapes using Defy (2,4-Dichlorophenoxyacetic Acid, dimethylamine salt; EPA Reg. No. 66222-221) and Dicamba 4 (Dimethylamine salt of dicamba; EPA Reg. No. 83222-14). He showed Inspector Snodgrass the containers of the products in his storage building. He also showed Inspector Snodgrass the sprayer he used. It was a 300 gallon sprayer with a 30 foot boom. Inspector Snodgrass measured the height of the boom as being 30 inches above the ground. The boom's spray nozzles were Flood Jet TK-VS7.5. Respondent said it was calibrated for an output of 15 gallons per acres and he applied the products according to the label rates.

12. Respondent stated that he left an 8-10 foot buffer zone away from the fence. He said the wind was blowing from the vineyard towards his pasture when he sprayed. Inspector Snodgrass told him he needed to be very careful when applying those products so close to a vineyard and to pay close attention to the temperatures as well. Respondent said Mr. Cagle should have left a buffer zone and never planted the grapes so close to his pasture. He said he had talked with a farm supply store about possible alternatives to 2,4-D. He showed Inspector Snodgrass a container of Outrider (Sulfosulfuron, EPA Reg. No. 524-500). He said he had recently purchased it to try as an alternative to prevent the issue from happening again.

13. Complainant's Inspector found the following pesticides involved:

Buccaneer Plus, Glyphosate...41%; EPA Reg. No. 55467-9 Warning

Roundup Powermax, Glyphosate...48.7%; EPA Reg. No. 524-549 Caution



Defy Amine 4, 2,4-Dichlorophenoxyacetic Acid, dimethylamine salt...47.2%; EPA Reg. No. 66222-221 Danger

Dicamba Max 4, Dimethylamine salt of dicamba (3,6-dichloro-O-anisic acid)...49.2%; EPA Reg. No. 83222-14 Caution

14. The label statements are as follows:

**Defy Amine 4 label states:**

"Do not apply under circumstances where drift may occur to food, forage or other plantings....susceptible crops include...grapes in growing stage..."

**Dicamba DMA Salt label states:**

**SENSITIVE CROP PRECAUTIONS**

DICAMBA DMA SALT may cause injury to desirable trees and plants, particularly beans, cotton, flowers, fruit trees, grapes, ornamentals, peas, potatoes, soybeans, sunflowers, tobacco, tomatoes, and other broadleaf plants when contacting their roots, stems or foliage. These plants are most sensitive to DICAMBA DMA SALT during their development or growing stage.

Follow the precautions listed below when using DICAMBA DMA SALT.

- Do not treat areas where either possible downward movement into the soil or surface washing may cause contact of DICAMBA DMA SALT with the roots of desirable plants such as trees and shrubs.
- Avoid making applications when spray particles may be carried by air currents to areas where sensitive plants are growing, or when temperature inversions exist. Do not spray near sensitive plants if wind is gusty or in excess of 5 mph and moving in the direction of adjacent sensitive plants. Leave an adequate buffer zone between area to be treated and sensitive plants. Coarse sprays are less likely to drift out of the target area than fine sprays.

15. Based on the results of our investigation, Complainant alleges that Respondent, either by acts or omissions, violated the following provisions of the North Carolina Pesticide Law and or/Regulations:

N.C.G.S. § 143-440(b)

"The Board may ... require the certification and recertification of private applicators ... and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; ..."

N.C.G.S. §143-443 (b)(3) ----

It shall be unlawful:

"For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S. §143-456(a) (2) & (5)

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;"

2NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

16. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(d)---

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations.

17. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent agrees that he shall not apply, either personally or through a third-party, any product containing 2, 4-D, or Dicamba on any property that adjoins, abuts, or is in any way across from or adjacent to any property owned or operated by Woodmill Winery, 1506 John Beam Road, Vale, North Carolina 28168 (including, but not limited to, the fields currently farmed by Respondent located to the northwest of Woodmill Winery and south of John Beam Road); and Respondent acknowledges that any use of such products is in direct violation of the terms of this Agreement and may result in the imposition of additional civil penalties and/or the revocation of his Private Applicator's License;

- (d) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (e) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (f) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 17(e) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 17(e) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Albert Eugene Dellinger  
Albert Eugene Dellinger  
Dellinger Farms  
1650 John Beam Road  
Vale, North Carolina 28168

12-19-2015  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-4-2016  
Date

Christopher R. McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

12/28/15  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12 day of February

NORTH CAROLINA PESTICIDE BOARD

BY: Allen Carberry  
Co Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Albert E. Dellinger

**Respondent,**

Supplemental Information

Settlement conference was held with Albert E. Dellinger. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-040

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

KEVIN S. GARDNER,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Kevin S. Gardner, Respondent.

1. At all times pertinent to this matter, Respondent was the owner of a soybean field located in Stantonburg, North Carolina and maintained a Private Applicator License No. 038-80964.
2. On July 1, 2014, the North Carolina Pesticide Section received a complaint from Mr. Sam Bearden alleging that a pesticide application to Respondent's soybean field drifted onto Mr. Bearden's adjacent property and caused damage to his garden.
3. On July 2, 2014, Complainant's Inspector Doug Bullard met with Mr. Bearden who reported that he noticed the damage to his garden on June 26, 2014. Inspector Bullard observed a drift pattern of damaged vegetation from Respondent's soybean field to Mr. Bearden's garden. Mr. Bearden further verified that he had not used any herbicides in his garden or yard.
4. During the inspection, Complainant's Inspector collected a non-target vegetation (DB-48) and non-target soil (DB-49) sample. Complainant's Inspector also collected a target soil (DB-50) sample and photographed the target field of Respondent's soybeans.
5. On July 7, 2014, Complainant's Inspector met with Respondent who verified that on June 26, 2014, he was the applicator at the field in question and that he applied Gramoxone SL 2.0 and Envive at that time. Respondent also reported that the wind was blowing 8.1 mph out of the WNW at the time of application.

6. Dr. Henry Wade looked at the photographs in this case and stated, "I reviewed this case, including the photos taken by Doug Bullard on 7-2-14. To a reasonable degree of scientific certainty, the damage to the squash, sweet corn, and lawn on Sam Bearden's property was caused by paraquat."

7. The following pesticides were involved in the application:

Gramoxone SL 2.0 Herbicide (paraquat), EPA Reg. No. 100-1431, a postemergent, nonselective herbicide, Class I, Danger-Poison.

DuPont Envive Herbicide (chlorimuron-ethyl, flumioxazin, thifensulfuron-methyl), EPA Reg. No. 352-756, a sulfonyleurea/phenylphthalimide, preplant/preeemergent herbicide, Class III, Caution.

8. The lab results revealed the following:

		<u>paraquat</u>	<u>chlorimuron</u> <u>ethyl</u>	<u>flumioxazin</u>	<u>thifensulfuron</u> <u>methyl</u>
DB-48	Non-target vegetation, Bearden property	BQL<0.52 ppm	4.8 ppb	0.030 ppm	0.71 ppb
DB-49	Non-target soil, Bearden property	ND	0.26 ppb	ND	BQL<0.08 ppb
DB-50	Target vegetation, Gardner soybean field	20.4 ppm	52.2 ppb	1.01 ppm	2.67 ppb

9. The pesticide labels read as follows:

*Gramoxone SL 2.0 Herbicide:*

**"Environmental Hazards ... Drift ...** Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas."

*DuPont Envive Herbicide:*

**"Environmental Hazards ...** Do not apply when weather conditions favor drift from treated areas. ...

**IMPORTANT USE RESTRICTIONS ...** Do not apply this product when weather conditions favor spray drift from treated areas. ... Prevent drift of spray to desirable plants."

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S §143-440(b)---

"The Board may...require the certification and recertification of private applicators,...and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . ."

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S §143-456(a)(2) & (5)

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

"No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect."

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(d)---

"Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations."

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

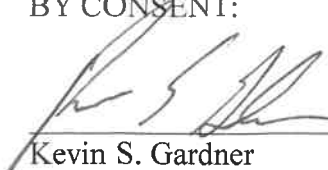
- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;



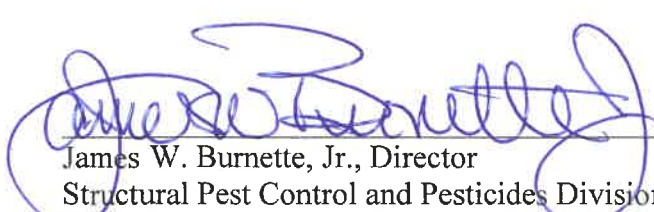
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Kevin S. Gardner  
7056 Shallingsons Mill Rd.  
Macclesfield, North Carolina 27852

12/5/15  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

12/16/2015  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

12/11/15  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12 day of January, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Co Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Kevin S. Gardner,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Kevin S. Gardner, Respondent

Patrick N. Farquhar, Eastern Field Manager

COUNTY

NORTH CAL  
AGRICULTU  
SERVICES, S  
CONTROL AN

*v.*

STEPHEN SCOTT E

Respo

PURSUANT TO N.C. policy that parties shall attempt to reach a stipulation, and upon final agreement a Settlement Agreement is made by the North Carolina Department of Agriculture and Consumer Services, Respondent.

1. At all times pertinent to this License No. (038) 84900.

2. On July 9, 2014, the North Carolina Pesticide Division received a complaint from Ms. Johnson reported that a worker told her that he was topping tobacco by the sprayer was working very close to where given any personal protective equipment ("PPE").

On July 9, 2014, Complaint respondent's father gave his other son a ride to Highway 41, Blad

3. On July 9, 2014, Complainant's Inspector Dunn gave him Respondent's photo of his father working very close to where personal protective equipment ("PPE") was being used in a field at the time of the incident. Respondent's father said that he had one worker applying Royaltac-M such and his other workers went to the same field by accident. Respondent's father said that he had eight H2A workers and these workers.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

STEPHEN SCOTT EDWARDS,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-043

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Stephen Scott Edwards, Respondent.

1. At all times pertinent to this matter, Respondent was the owner of the Edwards Farm Inc., located at 923 Old Highway 41, Bladenboro, North Carolina 28320, and held Private Applicator License No. (038) 84900.
2. On July 9, 2014, the North Carolina Department of Agriculture, Structural Pest Control and Pesticide Division received a complaint from Ms. Lori Johnson of Legal Aid of North Carolina. Ms. Johnson reported that a worker at the Edwards Farm in Bladenboro contacted her and told her that he was working in a field at the same time that the field was being sprayed. The worker said that he was topping tobacco by hand and some of the flowers were still wet because the sprayer was working very close to where he was. The worker also reported that he was not given any personal protective equipment ("PPE").
3. On July 9, 2014, Complainant's Inspector Barry Dunn went to the Edwards Farm. Respondent's father gave him Respondent's phone number. Respondent told Inspector Dunn that he had one worker applying Royaltac-M sucker control agent to one of his tobacco fields and his other workers went to the same field by accident to top the tobacco. Respondent told Inspector Dunn that he had eight H2A workers and explained where Inspector Dunn could find these workers.

4. Inspector Dunn went to the field where the workers were at and was met there by Pat Farquhar, the Eastern District Manager and Sergio Morales-Monroy, a bilingual specialist with the North Carolina Department of Agriculture, Structural Pest Control and Pesticide Division. All of the six farmworkers spoke limited English. With Mr. Morales-Monroy's assistance, Inspector Dunn asked the six farmworkers if an application of sucker control agent had been made in the field while they were in it. They replied that an application had been made in the field while they were in it.

5. Mr. Arturo Gonzalez Arroyo became the group's spokesman. He told Inspector Dunn that the sprayer applied the pesticide in front of him in the same row of tobacco at about 10:00 a.m. Mr. Arroyo said that he never felt any mist get on him, but the tobacco flowers that he handled were still wet. He also said that the smell was offensive, but he never felt ill. Mr. Arroyo told Inspector Dunn that the applicator was Mr. Javier Martinez.

6. Inspector Dunn interviewed Mr. Arroyo regarding the Worker Protection Standard ("WPS"). Mr. Arroyo said that:

- a) he had not been trained as a WPS worker;
- b) he was not told about recent pesticide applications;
- c) he was not told that an application was going to be made;
- d) he was not informed about heat stress;
- e) he was in the field immediately behind the sprayer;
- f) he received no PPE, even though he was working in the field before the re-entry interval had expired;
- g) no decontamination supplies were located within one-quarter mile of the field; and
- h) he was not aware of how he would get to a medical facility if a pesticide exposure incident occurred.

7. Inspector Dunn, Mr. Morales and Mr. Farquhar met with two other H2A workers, Mr. Javier Martinez Palacios and Delfino. Both workers had made and/or assisted with the pesticide application that morning. Mr. Martinez told Inspector Dunn, through Mr. Morales, that he had applied Royaltac-M in the field when the other six workers were in it. Mr. Martinez said that he had applied some Royaltac-M to part of the field in question on July 8, 2014 and was finishing it up on July 9, 2014 when the workers showed up. Mr. Martinez said that he did not know that workers had to be out of the field when he was applying sucker control.

8. Inspector Dunn interviewed Mr. Martinez regarding WPS. Mr. Martinez reported that:

- a) he had not been trained as a WPS handler;
- b) he did not know where any records of recent pesticide applications would be;
- c) he had not been informed about heat stress;
- d) he does not understand the information on the pesticide labels;
- e) there were no decontamination supplies located within one-quarter mile of the field.

9. On July 10, 2014, Inspector Dunn met with the Respondent. Respondent told Inspector Dunn that he contracted with an H2A group out of Virginia and felt that he had paid a fee for the H2A workers to be trained.

10. Inspector Dunn determined that Respondent maintained minimal records for pesticide applications made to his tobacco and that Respondent had no records of pesticide applications that were made to his peanuts, soybeans, and small grains. Inspector Dunn also determined that Respondent had no central notification site and pesticide application information was not recorded prior to the applications.

11. The following pesticides were involved:

Royaltac-M (fatty alcohols), EPA Reg. No. 400-451, a tobacco sucker control agent, Class I, Danger.

12. The label statements for the pesticides involved are as follows:

*Royaltac-M:*

**"DIRECTIONS FOR USE ...** Only protected handlers may be in the area during application. ... **AGRICULTURAL USE REQUIREMENTS.** Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170. ... Do not enter or allow worker entry into treated areas during the **restricted entry interval (REI) of 24 hours.** PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water is: coveralls; chemical-resistant gloves.

13. Based on the results of our investigation, Complainant alleges that Respondent, either by acts or omissions, violated the following provisions of the North Carolina Pesticide Law and or/Regulations:

N.C.G.S §143-440. (b)---

"The Board may . . . require the certification and recertification of private applicators, . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . "

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S §143-456 (a) (2) & (5)---

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

## 02 NCAC 09L .1805 ADOPTION BY REFERENCE

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."

### 40 C.F.R. §170.122 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(a) Location, accessibility, and legibility. The information shall be displayed in the location specified for the pesticide safety poster in §170.135(d) and shall be accessible and legible, as specified in §170.135 (e) and (f).

(b) Timing.

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.

(c) Required information. The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

### 40 C.F.R. §170.135 Posted pesticide safety information.

(a) *Requirement.* When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, pesticide safety information.

(b) *Pesticide safety poster.* A safety poster must be displayed that conveys, at a minimum, the following basic pesticide safety concepts [outlined in subparts (1) and (2)].



(c) *Emergency medical care information.* (1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster.

(d) *Location.* (1) The information shall be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by workers.

(2) The information shall be displayed in a location in or near the forest in a place where it can be readily seen and read by workers and where workers are likely to congregate or pass by, such as at a decontamination site or an equipment storage site.

40 C.F.R. §170.150 Decontamination.

(a)(1) *Requirement.* The agricultural employer must provide decontamination supplies for workers in accordance with this section whenever:

(i) Any worker on the agricultural establishment is performing an activity in the area where a pesticide was applied or a restricted-entry interval (REI) was in effect within the last 30 days, and;

(ii) The worker contacts anything that has been treated with the pesticide, including, but not limited to soil, water, plants, plant surfaces, and plant parts.

40 C.F.R. §170.222 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(a) *Location, accessibility, and legibility.* The information shall be displayed in the location specified for the pesticide safety poster in §170.135(d) and shall be accessible and legible, as specified in §170.135 (e) and (f).

(b) *Timing.*

(1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.

(c)(1), (2), (3) and (4) The information shall include:

The location and description of the treated area.

The product name, EPA registration number, and active ingredient(s) of the pesticide.

The time and date the pesticide is to be applied.

The restricted-entry interval for the pesticide.

40 C.F.R. §170.230 Pesticide safety training for handlers.

(a) *Requirement.* Before any handler performs any handling task, the handler employer shall assure that the handler has been trained in accordance with this section during the last 5 years, counting from the end of the month in which the training was completed.

40 C.F.R. §170.232 Knowledge of labeling and site-specific information.

(a) *Knowledge of labeling information.* (1) The handler employer shall assure that before the handler performs any handling activity, the handler either has read the product labeling or has been informed in a manner the handler can understand of all labeling requirements related to safe use of the pesticide, such as signal words, human hazard precautions, personal protective equipment requirements, first aid instructions, environmental precautions, and any additional precautions pertaining to the handling activity to be performed.

40 C.F.R. §170.235 Posted pesticide safety information.

(a) *Requirement.* When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, pesticide safety information.

(b) *Pesticide safety poster.* A safety poster must be displayed that conveys, at a minimum, the following basic pesticide safety concepts [outlined in subparts (1) and (2)].

(c) *Emergency medical care information.* (1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster.

(d) *Location.* (1) The information shall be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by workers.

(2) The information shall be displayed in a location in or near the forest in a place where it can be readily seen and read by workers and where workers are likely to congregate or pass by, such as at a decontamination site or an equipment storage site.

§170.240(a) and (c) Personal protective equipment.

Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.

When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall provide the appropriate personal protective equipment in clean and operating condition to the handler.

40 C.F.R. §170.250 Decontamination.

(a) *Requirement.* During any handling activity, the handler employer shall provide for handlers, in accordance with this section, decontamination supplies for washing off pesticides and pesticide residues.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-469(d)---

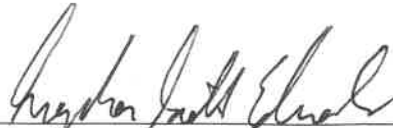
"Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500)."

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

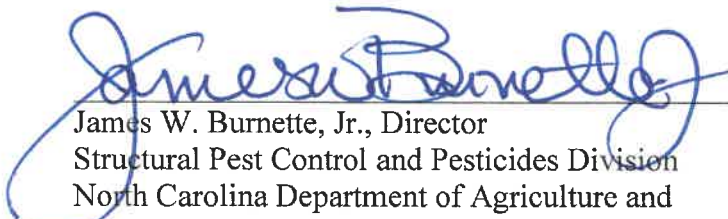
- (a) That Respondent agrees to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

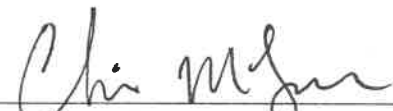
BY CONSENT:

  
\_\_\_\_\_  
Stephen Scott Edwards  
Edwards Farms Inc.  
923 Old Highway 41  
Bladenboro, North Carolina 28320

12-25-15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-5-2016  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

1/4/16  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12 day of January

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Stephen Scott Edwards,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Stephen Scott Edwards, Respondent  
Patrick N. Farquhar, Eastern Field Manager

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-063

# SETTLEMENT AGREEMENT

IR2014-063RSA

5. Harvey's Southeast's Facility Owner/Manager, Don Formyduval, told Inspector Merritt that Chris Edge was the salesman who made the RUP sales to Mr. Blackman. Chris Edge reported to Complainant's Inspector that he did not know how the certification expiration date error of December 31, 2015 occurred or how the incorrect date was saved in their computer system. Respondent told Complainant's Inspector that he would work with Mr. Formyduval to develop procedures to keep this error from occurring again.

6. The following pesticides were involved in this inspection:

Atrazine 4L Herbicide (atrazine), a triazine herbicide  
EPA Reg. No. 66222-36, Class III, Caution.

Bicep II Magnum Herbicide (atrazine, s-metolachlor), a triazine/chloroacetamide herbicide, EPA Reg. No. 100-817, Class III, Caution.

7. The following label statements were reported by Complainant's Inspector:

*Atrazine 4L Herbicide and Bicep II Magnum Herbicide:*

"RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ..."

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-450(b)---

"Each pesticide dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use or application of pesticides."

N.C.G.S. §143-451(a) (3) and (13)---

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, or an employee under the direct supervision of one of the aforementioned certified or licensed applicators."

02 NCAC 09L .1302 ---

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(b)---

“A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.”

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board’s approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board’s approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.



WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Mark A. Suggs  
Mr. Mark A. Suggs  
Harvey's Southeast  
1077 Highway 701 Bypass  
Whiteville, North Carolina 28472

11-17-15  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

11/25/2015  
Date

Barry H. Bloch  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

23 NOV 2015  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED

this the 12 day of January

NORTH CAROLINA PESTICIDE BOARD

BY: [Signature]  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Mark A. Suggs,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Mark A. Suggs, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File Nos. IR2014-053 &  
IR2014-061

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

BRYSON J. COOPER,

Respondent.

SETTLEMENT AGREEMENT

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Bryson J. Cooper, Respondent.

1. At all times pertinent to this matter, Respondent, Bryson J. Cooper was employed by Craft Air Services, LLC, and held Aerial Applicator (Pilot) License No. 027-803.

#### IR2014-053 SUMMARY

2. On July 25, 2014, Complainant's Inspector Paul H. Ward, III investigated a complaint by Christine Beaumont, 162 Deerfield Trail, Shawboro, North Carolina, regarding aerial applications that occurred on July 23 and 25, 2014, which were intended for a cornfield across from Ms. Beaumont's property. Ms. Beaumont reported that, during the first event, she felt a mist hit her face as it fell from a yellow plane that was making an application to the cornfield located across from her property.

3. Ms. Beaumont also indicated to Complainant's Inspector that the second event, which occurred the morning of the investigation, resulted from an aerial application to the cornfield across East Ridge. She stated that she was driving down Deerfield Trail when she stopped her vehicle to watch a yellow plane make an application and some of the pesticide came through her vehicle's vents causing tingling and burning to her face, lips and esophagus which also caused her to have a headache and her chest to feel heavy.

4. On July 26, 2014, Inspector Ward collected vegetation and soil samples from the affected areas and the following lab results were reported:

**Lab Results**

	<u>Azoxystrobin</u>	<u>Propiconazole</u>
PW-26 Tree vegetation 58' south of Beaumont house	0.168 ppm	0.138 ppm
PW-27 Soil from Beaumont yard, 67' south of house	0.030 ppm	0.012 ppm
PW-28 Control swab	ND	ND
PW-29 Swab taken off of Beaumont car	0.033 ug	0.097 ug
PW-30 Beaumont pears	0.006 ppm	0.003 ppm
PW-31 Beaumont pear tree vegetation,	0.218 ppm	0.272 ppm
PW-32 Vegetation sample collect 11' north of East Ridge Rd.	6.12 ppm	5.62 ppm
PW-33 Vegetation sample collect 14' south of East Ridge Rd.	5.42 ppm	4.85 ppm
PW-34 Target vegetation from Langley cornfield	0.929 ppm	1.68 ppm
PW-35 Target soil from Langley cornfield	0.209 ppm	0.178 ppm
PW-36 Target vegetation from Langley cornfield	2.24 ppm	1.35 ppm
PW-37 Target vegetation from Smith cornfield	0.023 ppm	1.35 ppm
PW-38 Target soil from Smith cornfield	0.095 ppm	0.099 ppm

5. The lab results confirmed the following pesticides where involved in the aerial application:

Quilt Xcel Fungicide (azoxystrobin, propiconazole), EPA Reg. No. 100-1324, a strobilurin/triazole fungicide, Class II, Warning.

6. The registered labels for the pesticides used during the aerial application contain the following language:

*Quilt Xcel Fungicide:*

**“DIRECTIONS FOR USE ...**

**Spray Drift Management:** To avoid spray drift, do not apply when conditions favor drift beyond the target area. ... **ATTENTION** ... DO NOT spray when conditions favor drift beyond area intended for application. ...

**MIXING AND APPLICATION METHODS** ... Application Instructions ... Do not apply in a manner that will result in exposure to humans or animals.”

7. On July 28, 2014, Complainant's Inspector, after learning Mr. Robert Langley was the owner of the target cornfield, contacted Mr. Langley to obtain information pertaining to the aerial application of the field within the prior week. Mr. Langley stated that he works with Crop Production Services (CPS) to manage all pesticide applications for his fields. Complainant's Inspector contacted Mr. Mike Nyborg with CPS and Mr. Nyborg confirmed that Craft Air Services was hired by CPS to perform the aerial application to Mr. Langley's field and that the pilot was Respondent.

8. On July 28, 2014, Complainant's Inspector met with Mr. Craig Craft, the owner of Craft Air Services and Respondent. Respondent confirmed that he performed the pesticide application with Quilt Xcel on Mr. Langley's cornfield on July 23 and 25, 2014. Per Complainant's Inspector's request, Respondent provided maps highlighting the application areas, noting that he avoided treatment of one field because it is adjacent to a home that frequently complains about aerial applications. Complainant's Inspector indicated in his discussion with Respondent that the home he avoided was not the complaining home, but rather a homeowner located across from the application field on East Ridge Road.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)

(b) "The Board may ... require the certification and recertification of private applicators ... and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; ..."

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1005(c) and (e)

(c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.

(e) No pesticide shall be deposited within 100 feet of any residence.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

#### IR2014-061 SUMMARY

11. On August 13, 2014, Complainant's Inspector Paul Ward investigated a complaint by Mr. Dewey Pierce, Road Maintenance Supervisor for the North Carolina Department of Transportation ("DOT"). Mr. Pierce complained that during the aerial application to the Mac Lawrence Farms' tobacco field, adjacent to Avoca Farm Road in Merry Hill, several DOT employees were sprayed with the aerial pesticide application while working to patch the roadway.

12. On August 13, 2014, Complainant's Inspector conducted several interviews of the DOT workers onsite during the aerial application, which is reported as follows:

**Interview of Mr. Stacy A. Mizzelle:** Mr. Mizelle reported that, on August 5, 2014, he was working on the crew assigned to repair Avoca Farm Road and, at that same time, a yellow plane was spraying the tobacco field next to the road. He reported that some of the spray got on him and he could feel and taste the pesticide being applied by the plane. Mr. Mizelle indicated that the wind was blowing from the tobacco field towards the road. Mr. Mizelle did report a sore throat and knot in his throat following this incident and sought medical evaluation for his symptoms.

**Interview of Mr. Ronald Clyde Jernigan:** Mr. Jernigan reported that, on August 5, 2014, he was working on Avoca Farm Road and, at the same time, a yellow plane was spraying the tobacco field next to where they were working. He stated that whatever the plane was spraying got on him once. Mr. Jernigan reported no problems from the exposure and confirmed that he did not go to the doctor.

**Interview of Mr. Kevin Gatling:** Mr. Gatling reported that, on August 5, 2014, he was working on Avoca Farm Road and, at the same time, a yellow plane was spraying the tobacco field next to where they were working. Mr. Gatling told Inspector Ward that he felt a mist get on him from what the plane was spraying. Mr. Gatling reported no problems from this and confirmed he did not go to the doctor.

**Interview of Mr. Randy Smallwood:** Mr. Smallwood reported that, on August 5, 2014, he was working on Avoca Farm Road and, at the same time, a yellow plane was spraying the tobacco field next to where they were working. Mr. Smallwood indicated that he got some of what the plane was spraying on him during the application. Mr. Smallwood reported that some of the application got into mouth and he felt a mist, like a drizzle of rain, get on him. Mr. Smallwood reported no problems from this exposure and confirmed he did not go to the doctor.

**Interview of Mr. Tommy Hoggard** (August 14, 2014): Mr. Hoggard reported that, on August 5, 2014, he was working on Avoca Farm Road and, at the same time, a yellow plane was spraying the tobacco field next to where they were working. Mr. Hoggard reported that he felt what the plane was spraying get on him one time. He stated that it felt like a fog hit him and it had a stinking odor. Mr. Hoggard reported no problems from the exposure and confirmed he did not go to the doctor.

13. After further investigation, Complainant's Inspector determined that Mac Lawrence of Mac Lawrence Farms in Colerain, North Carolina owned the tobacco field where the aerial application occurred and that Mr. Lawrence had contacted Coastal AgroBusiness to secure a plane to spray his field. Complainant's Inspector then contacted Mr. Walter Bynum, Manager of Coastal AgroBusiness and was informed that Craft Air Services was hired by them to spray Mr. Lawrence's tobacco field.

14. On August 15, 2014, Complainant's Inspector met with Respondent, an aerial applicator for Craft Air Services, who confirmed that he made a pesticide application to Mr. Lawrence's tobacco field on August 5, 2014. Respondent indicated that he sprayed DiPel Biological Insecticide and Sintac spreader on the Lawrence tobacco field. Respondent also confirmed that he did see the DOT workers on the roadway and, due to their proximity to the tobacco field, he restricted the areas of the field he covered to attempt to create a barrier between the field and the workers. Respondent reported that he returned to complete the application to the areas of the field adjacent the roadway once he believed the DOT workers had left the site. Respondent further reported to Complainant's Inspector that the wind was blowing at the time of the application.

15. Complainant's Inspector identified the following pesticides involved:

DiPel ES BIOLOGICAL INSECTICIDE (bacillus thuringiensis), EPA Reg. No. 73049-17, a biological insecticide, Class III, Caution.

16. Complainant's Inspector identified the following label statement from the pesticide involved:

*DiPel ES BIOLOGICAL INSECTICIDE:*

**“DIRECTIONS FOR USE ... AGRICULTURAL USE REQUIREMENTS ...**

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170. ... Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”

17. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443 (b)(3) ----

It shall be unlawful for any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456(a) (2) and (5)---

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

NCAC 09L .1005 (c)

No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.

18. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.



SETTLEMENT – IR2014-053 & IR2014-061

19. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Three Thousand Dollars (\$3,000.00) [\$1,600.00 for IR2014-053 and \$1,400.00 for IR2014-061] to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Three Thousand Dollars (\$3,000.00) in fifteen (15) payments of Two Hundred Dollars (\$200.00) each. Respondent's first payment of Two Hundred Dollars (\$200.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining fourteen (14) installment payments, in the amount of Two Hundred Dollars (\$200.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Three Thousand Dollars (\$3,000.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent further acknowledges and agrees that, if Respondent fails to make any payment as required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court and file a Statement Authorizing Confession of Judgment in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (e) That Respondent agrees that if he fails to pay the total agreed upon sum of Three Thousand Dollars (\$3,000.00) per the payment installment plan outlined in 19(a), this Agreement will constitute a civil penalty assessment of the Board of Three Thousand Dollars (\$3,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 19(e) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 19(e) of this Agreement.

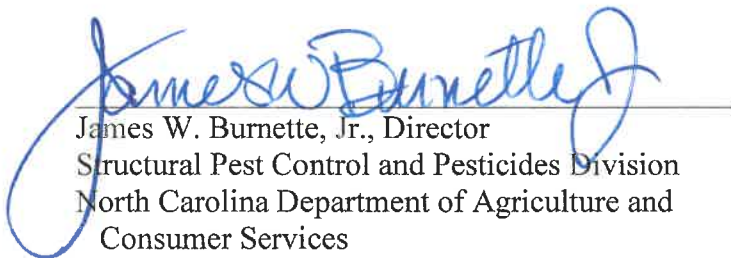
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

  
Bryson J. Cooper

Craft Air Services, LLC  
865 Swamp Road  
Hertford, North Carolina 27944

May 20, 2016  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services

1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

6/7/2016  
Date

  
Christopher R. McLennan

Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/6/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of July 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Bryson J. Cooper,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Bryson J. Cooper, Respondent  
Patrick N. Farquhar, Eastern Field Manager

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Bryson J. Cooper,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Bryson J. Cooper, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-087

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JOHN H. JOHNSON, JR.,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and John H. Johnson, Jr., Respondent.

1. At all times pertinent to this matter, Respondent was the owner of a farm located at 5133 Four Way Road, Hookerton, North Carolina 28538, and held Private Applicator License No. 038-60571.
2. On December 22, 2014, Complainant received a complaint from Melissa Bailey, a representative from N.C. Field of Kinston, North Carolina. Ms. Bailey filed a Worker Protection Standard ("WPS") complaint on behalf of a child tobacco worker regarding various harmful conditions that occurred while working in numerous tobacco fields in Greene, Pitt and Lenoir Counties.
3. Complainant's Inspectors Barry Dunn and Paul Ward investigated the allegations of the minor worker, which included interviewing numerous tobacco farmers.
4. On January 6, 2015, Complainant's Inspectors interviewed Respondent regarding the tobacco field he farmed in 2014 located at 4841 Willow Green Road in Farmville, North Carolina. During the interview, Respondent stated that he used H2A workers to assist with the tobacco fields and that he employed a crew leader, Cesar Pineda (a/k/a Martin Juarez), to provide workers during the topping and suckering process. Respondent's wife, Marilu Johnson is able to communicate with the workers and monitors their locations while they work in the fields. Respondent denied any knowledge of a minor boy working in his fields or getting sick as a result of working in his fields.

5. Upon further investigation, Complainant's Inspectors learned that Mr. David Duran, a non-family member employee of Respondent, handles pesticide applications for Respondent's tobacco field. Mr. Duran did not have a valid pesticide license and had not received any WPS handler training.

6. Respondent admitted to the use of various pesticide applications to the tobacco field in question, namely Dipel, MH 30, Contact, Acephate, Lorsban or Whirlwind (containing Chlorpyrifos) and Prime Plus.

7. Based on their investigation, Complainant's Inspectors determined that: Respondent did not have a WPS safety poster available; that no employee was trained as a handler; and that Respondent's list of recently applied pesticides did not include the EPA Reg. Nos., active ingredients, re-entry intervals, or application beginning and ending times recorded, all of which are required.

8. On January 14, 2015, Complainant's Inspector Ward returned to meet with Respondent to review the pesticide records that Respondent was able to locate and inspect Respondent's PPE kit. Respondent's pesticide records did not indicate the EPA Registration Nos., the beginning and ending application time, the REI, or Active Ingredients in the pesticides used.

9. The following pesticides were involved:

Prime + (flumetralin), EPA Reg. No. 100-640, a plant growth regulator, Class I, Danger.

Dipel, MH-30, Contact, and Acephate (specific application/EPA Nos. unknown due to failure to keep records)

10. The label statements for the pesticides involved are as follows:

***Prime +*: "AGRICULTURAL USE REQUIREMENTS**

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE) and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard."

11. Based on the results of our investigation, Complainant alleges that Respondent, either by acts or omissions, violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S §143-440(b)---

"The Board may . . . require the certification and recertification of private applicators, . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . "

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S §143-456 (a) (2) & (5)---

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1805---

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."

40 C.F.R. §170.230 Pesticide safety training for handlers.

(a) *Requirement.* Before any handler performs any handling task, the handler employer shall assure that the handler has been trained in accordance with this section during the last 5 years, counting from the end of the month in which the training was completed.

02 N.C. Admin. Code 9L .1807---

(a) Concerning application information requirements contained in 40 CFR Sections 170.122 and 170.222 the following is also required to be completed by the agricultural employer:

- (1) In addition to the requirements of Sections 170.122(c)(3), and 170.222(c)(3), the specific time of day when each pesticide application was completed must be recorded immediately upon completion of the application. Each day of the application shall be recorded as a separate record.
- (2) After the application information referenced in (a)(1) of this Rule and the other information in Sections 170.122(c) and 170.222(c) has been displayed for the required period of time in Section 170.122(b) and 170.222(b), the agricultural employer shall maintain the information for a period of two years from the specific time of day when each pesticide application was completed. Such information shall be available for inspection and copying by the Board or its agents upon their request.



12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-469(d)---

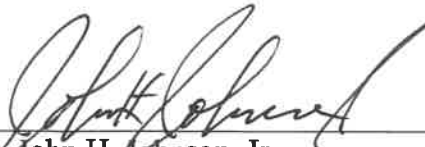
"Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations."

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

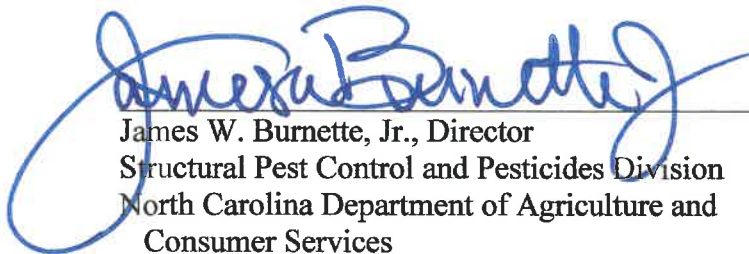
- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Mr. John H. Johnson, Jr.  
5133 Four Way Road  
Hookerton, North Carolina 28538

5-31-16  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

6/2/2016  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/1/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of July, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

John H. Johnson, Jr.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

John H. Johnson, Jr., Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-002B

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

CYRUS THOMAS BRYAN,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Cyrus Thomas Bryan, Respondent.

1. At all times pertinent to this matter, Respondent was an unlicensed and uncertified applicator operating a farm at 258 Cypress Creek Road in Richlands, North Carolina. Respondent previously held Private Applicator Certificate No. 038-27769, which expired on December 31, 2000.

2. On March 9, 2015, the North Carolina Pesticide Section conducted a restricted use pesticide (RUP) Sales Records Inspection of the Sholar Farm Supply in Wallace, North Carolina following information provided through an anonymous complaint called into the pesticide office on March 6, 2015. The March 6, 2015 anonymous complaint named two specific farmers, one of which was Respondent.

3. On March 9, 2015, based on the allegations of the complaint, Complainant's Inspector Douglas P. Bullard went to Respondent's farm and inspected Respondent's pesticide storage area where he found the RUP Bicep II Magnum. Respondent stated that he had purchased the Bicep II Magnum from Sholar Farm Supply and applied to his fields. Invoices obtained from Sholar Farm Supply list Mr. Bryan as purchasing 15 gallons of Bicep II Magnum on April 22, 2014.

4. Complainant's Inspector also noted that during the inspection he observed a trash pile near Respondent's storage area, which contained Bicep II Magnum pesticide containers with a release date of January 2014 printed on them. Respondent stated that these containers were rinsed out prior to being burned. Complainant's Inspector informed Respondent that it was illegal to burn the pesticide containers and that they should be disposed of properly at a container recycling site.

5. During the investigation, Respondent admitted to Complainant's Inspector that his private applicator certification (No. 038-27769) expired in 2000 and that he was interested in getting recertified. As a result, Complainant's Inspector mailed Respondent a schedule of pesticide exams and schools.

6. The RUPs involved in the purchase, application, and disposal by Respondent, an unlicensed and uncertified applicator, is detailed below:

Bicep II Magnum, EPA Reg. No. 100-817, a bipyridylum, contact, non-selective herbicide, Class III, Caution.

7. The label statement for the RUP listed above reads:

*Bicep II Magnum Herbicide*

"RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ... **STORAGE AND DISPOSAL Container Handling [equal to or less than 5 gallons]** Non-refillable container. ... Triple rinse container (or equivalent) promptly after emptying. ... Then offer for recycling if available or puncture and dispose of in a sanitary landfill ..."

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-440(b)

The Board may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation.

N.C.G.S. §143-441(c)---

"No person shall dispose of, discard, or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, or to pollute any water supply or waterway, or in any manner contrary to the regulations of the Board."

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S § 143-456 (a) (2) & (5)

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .0603 (b)

Pesticide containers shall be disposed of in accordance with labeling requirements. Note: In addition to the requirements of these rules, pesticide container disposal is also subject to rules adopted by the North Carolina Commission for Health Services as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste Management, as applicable, and to rules adopted by the North Carolina Environmental Management Commission as set forth in 15A NCAC 2D, Air Pollution Control Requirements.

02 NCAC 09L .0604 (1), (2) and (5)

No person shall dispose of any pesticide or pesticide container in any of the following manners:

In a manner inconsistent with these rules;

So as to cause or allow open dumping of pesticides or pesticide containers; and

So as to violate any applicable provisions of the North Carolina Pesticide Law.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(d)---

"Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) and only for willful violations."

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

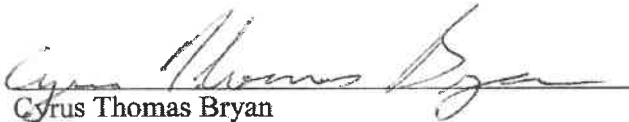
- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Eight Hundred Dollars (\$800.00) in four (4) payments of Two Hundred

Dollars (\$200.00) each. Respondent's first payment of Two Hundred Dollars (\$200.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining three (3) installment payments, in the amount of Two Hundred Dollars (\$200.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Eight Hundred Dollars (\$800.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469.

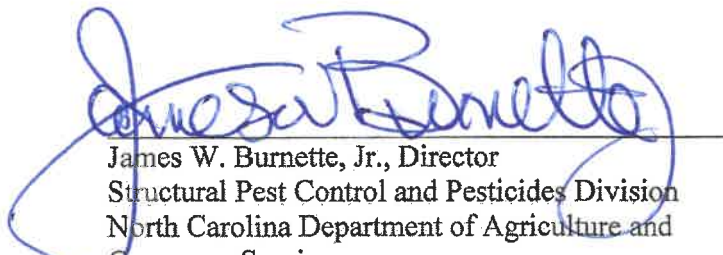
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent further acknowledges and agrees that Respondent has signed a Statement Authorizing Confession of Judgment, and that, if Respondent fails to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) per the payment installment plan outlined in 10(a), this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

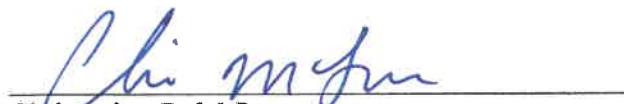
BY CONSENT:

  
Cyrus Thomas Bryan  
258 Cypress Creek Road  
Richlands, North Carolina 28574

7-11-16  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

7/12/2016  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

7/12/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of July, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

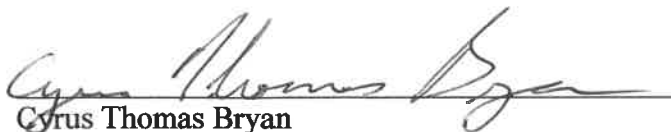
  
Chairman





WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Cyrus Thomas Bryan  
258 Cypress Creek Road  
Richlands, North Carolina 28574

7-11-16

Date

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

Date

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

Date

\*\*\*\*\*  
APPROVED AND ORDERED FILED,

this the \_\_\_\_ day of \_\_\_\_\_, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY: \_\_\_\_\_  
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Cyrus Thomas Bryan,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Cyrus Thomas Bryan, Respondent  
Patrick N. Farquhar, Eastern Field Manager

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-002C

Respondent.

# SETTLEMENT AGREEMENT

4. During the inspection of Respondent's farm, Complainant's Inspector identified a container of Asana, a Restricted Use Pesticide, which Respondent indicated had been purchased while Mr. King was still alive.

5. Invoices obtained from Scholar Farm Supply indicate that Respondent purchased 22.5 gallons of Bicep II Magnum on April 21, 2014, which was after Mr. King's death. Respondent stated to Complainant's Inspector that he had purchased the Bicep II Magnum and applied it on his cornfield, but that he was not aware that the Bicep II Magnum product was an RUP.

6. The RUP purchased and applied by Respondent, an unlicensed and uncertified applicator at the time, is detailed below:

Bicep II Magnum, EPA Reg. No. 100-817, a bipyridylium, contact, non-selective herbicide, Class III, Caution.

7. The label statement for the RUP listed above reads:

*Bicep II Magnum Herbicide*

"RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ... **STORAGE AND DISPOSAL Container Handling [equal to or less than 5 gallons]** Non-refillable container. ... Triple rinse container (or equivalent) promptly after emptying. ... Then offer for recycling if available or puncture and dispose of in a sanitary landfill ..."

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S §143-440. (b)---

"The Board may . . . require the certification and recertification of private applicators, . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . ."

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S. §143-456(a) (2) and (5) ---

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board."

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(d)---

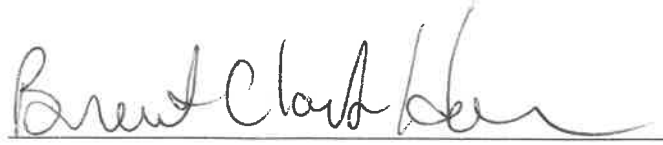
“Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) and only for willful violations.”

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Five Hundred Dollars (\$500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board’s approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Five Hundred Dollars (\$500.00) within thirty (30) days of the Board’s approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Five Hundred Dollars (\$500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(d) of this Agreement.

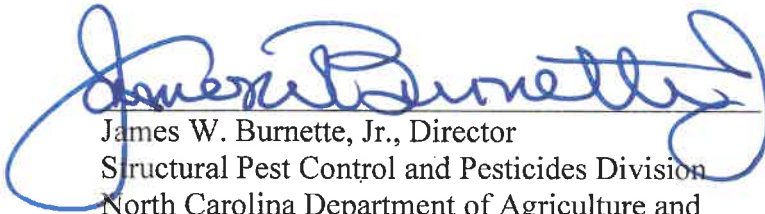
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Brent Clark Horne  
Horne's Paving  
588 Cedar Fork Road  
Beulaville, North Carolina 28518

6/23/16  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

6/30/2016  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/28/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of July, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman

4



IR2015-002C  
RSA

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Brent Clark Horne,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Brent Clark Horne, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-028

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

SAMUEL C. BONEY, JR., )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Samuel C. Boney, Jr., Respondent.

1. At all times pertinent to this matter, Respondent, located at 3740 NC 11 South, Wallace, North Carolina, maintained Private Applicator License No. 038-24983.

2. On June 3, 2015, Complainant's Inspectors, Douglas P. Bullard and Patrick N. Farquhar investigated a complaint filed by Mr. Mike Long of 619 Rosemary Road, Rose Hill, North Carolina. Mr. Long complained that a pesticide application, performed by Respondent to a soybean field adjacent to his vineyard on May 27, 2015, may have drifted and resulted in damage to his grapevines.

3. Based on Mr. Long's allegations, Complainant's Inspector Bullard obtained soil and vegetation samples from the vineyard and additional soil samples from the adjacent soybean field. Complainant's Inspector also took several photographs of the damaged foliage, vineyard and soybean field areas.

4. On that same day, Complainant's Inspector contacted Respondent who confirmed that the pesticide application performed on the target soybean field was Gramoxone SL 2.0 and Envive.



5. Complainant's Inspector arranged an interview with Respondent on June 12, 2015. During that interview, Respondent admitted to the use of pesticides on his soybean field for burndown, but could not provide the exact date of application. In addition, Complainant's Inspector took photographs depicting the pesticide sprayer used by Respondent, as well as the pesticide containers used during the application on May 27, 2015.

6. Dr. Henry Wade looked at the photographs in this case and stated, "I reviewed this case, including the photos taken by Doug Bullard. To a reasonable degree of scientific certainty, injury symptoms to the grape leaves was caused by the Gramoxone and Envive that drifted from the herbicide application to an adjacent field by Samuel Boney Jr."

7. The samples collected identified the following pesticides were involved in the application in question:

Gramoxone SL 2.0 Herbicide (paraquat), EPA Reg. No. 100-1431, a postemergence, nonselective herbicide, Class I, Danger-Poison.

Envive Herbicide (chlorimuron-ethyl, flumioxazin, thifensulfuron-methyl), EPA Reg. No. 352-756, a preplant and postemergent herbicide, Class III, Caution.

8. The following lab results were obtained from the samples collected:

		Thifensulfuron		Chlorimuron	Flumioxazin
		<u>Paraquat</u>	<u>-methyl</u>	<u>-ethyl</u>	
DB-29	Non-target grape vegetation, Long vineyard	ND	ND	ND	ND
DB-30	Non-target soil, Long vineyard	ND	ND	ND	ND
DB-31	Target soil, Boney soybean field	1.04 ppm	ND	ND	0.153 ppm

9. The label statements for the pesticides identified in the lab results noted above are as follows:

*Gramoxone SL 2.0 Herbicide:*

**"Environmental Hazards ... Drift ...** Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas."

*Envive Herbicide:*

**"ENVIRONMENTAL HAZARDS ...** Do not apply when weather conditions favor drift from treated areas. ... **IMPORTANT PRECAUTIONS AND RESTRICTIONS ...** Prevent drift of spray to desirable plants."

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S § 143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S § 143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . .and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C.G.S. §143-469(d)---

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Six Hundred Dollars (\$600.00) in six (6) payments of One Hundred Dollars (\$100.00) each. Respondent's first payment of One Hundred Dollars

(\$100.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining five (5) installment payments, in the amount of One Hundred Dollars (\$100.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Six Hundred Dollars (\$600.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469;

- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent further acknowledges and agrees that Respondent has signed a Statement Authorizing Confession of Judgment, and that, if Respondent fails to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (e) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) per the payment installment plan outlined in 12(a), his Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(e) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(e) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Samuel C Boney Jr  
Samuel C. Boney, Jr.  
3740 NC 11 South  
Wallace, North Carolina 28466

4-18-16  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

April 29, 2016  
Date

Chris McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

4/28/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of July

NORTH CAROLINA PESTICIDE BOARD

BY:

Rufus L. Langley  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Samuel C. Boney, Jr.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Samuel C. Boney, Jr., Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-029

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
WILLIAM ALLEN, )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and William Allen, Respondent.

1. At all times pertinent to this matter, Respondent was the pesticide applicator and responsible licensee (Applicator License No. 038-85262) for Jack Allen Farms, located at 2607 Coopers Point Drive, Winterville, North Carolina 28598.
2. On June 10, 2015, Complainant's Inspectors Michael A. Mitchell and William B. Dunn investigated a complaint by Ms. Dianne Stancill who stated that a pesticide application performed on May 29, 2015 to the cotton field bordering three sides of her property caused damage to two trees in her yard.
3. Ms. Stancill also reported that her sisters, who also live adjacent to the cotton field, had trees on their properties which were adversely affected following the pesticide application on May 29, 2015.
4. During the interview with Ms. Stancill, Complainant's Inspectors obtained several vegetation samples from the three adjacent properties, namely Ms. Stancill's yard, Ms. Kathy W. Carnes residence and Ms. Suzanne W. Gray's property. Ms. Stancill also confirmed that Mr. Jack Allen of Jack Allen Farms tends the cotton field to which the application at issue was performed.

5. Based upon the information obtained during Ms. Stancill's interview, Complainant's Inspectors met with Mr. Jack Allen to discuss the pesticide application at issue, which was performed by his nephew, Respondent. During the interview, Respondent returned to his uncle's farm and spoke with Complainant's Inspectors. Respondent confirmed he performed an application on May 29, 2015 and stated that he used Liberty 280 SL Herbicide and Warrant Herbicide for the application.

6. At the request of the inspectors, Respondent provided all appropriate labels and a copy of his application records.

7. Complainant's Inspector determined the following pesticides were involved:

Liberty 280 SL Herbicide (glufosinate-ammonia), EPA Reg. No. 264-829, a non-selective postemergence herbicide, Class II, Warning.

Warrant Herbicide (acetochlor), EPA Reg. No. 524-591, a chloroacetamide herbicide, Class III, Caution.

8. The label statements obtained by Complainant's Inspector read as follows:

*Liberty 280 SL Herbicide:*

**"APPLICATION AND MIXING PROCEDURES ... Ground application: ...** DO NOT apply when winds are gusty, or when conditions will favor movement of spray particles off the desired spray target. ... **SPRAY DRIFT MANAGEMENT ...** Do not apply when weather conditions, wind speed, or wind direction may cause spray drift to non-target areas.... **Sensitive Areas: ...** Do not apply under circumstances where possible drift to unprotected persons or to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use, or consumption can occur."

*Warrant Herbicide:*

**"Use restrictions ...** Do not apply when wind conditions favor drift to non-target sites."

9. The following are an index of the samples collected by Complainant's Inspectors during their interview with Ms. Stancill:

- |        |  |
|--------|--|
| MM-001 | approximately 2 lbs. of leaves hand-picked from the Elm tree 50 feet west of Stancill's residence and 47 feet east of the edge of the cotton field.  |
| MM-002 | approximately 2 lbs. of leaves hand-picked from the Japanese Maple tree 6 feet east of the Carnes' residence and 65 feet north of the edge of the cotton field.                              |
| MM-003 | approximately 2 lbs. of leaves hand-picked from the seventh Crape Myrtle tree from County Home Rd., 26 feet south of the Gray's residence and 44 feet north of the edge of the cotton field. |

- MM-004 16 oz. of soil, taken over a 2x2 foot area with a polyprobe, 104 feet south of the Gray's residence, 60 feet into the cotton field and 44 feet west of the ditch at the rear of the field.
- MM-005 16 oz. of soil, taken over a 2x2 foot area with a polyprobe, 101 feet south of the Carnes' residence, 42 feet into the field and 40 feet west of County Home Rd.
- MM-006 16 oz. of soil, taken over a 2x2 foot area, 139 feet west of Stancill's residence, 44 feet into the cotton field and 40 feet south of Ayden Golf Club Rd.

10. The lab results revealed the following:

		<u><b>Glufosinate</b></u>	<u><b>Acetochlor</b></u>
MM-01	Non-target vegetation, Stancill elm tree	BQL<0.75 ppm	4.9 ppm
MM-02	Non-target vegetation, Carnes maple tree	0.65 ppm	1.0 ppm
MM-03	Non-target vegetation, Gray crepe myrtle tree	BQL<0.50 ppm	1.0 ppm
MM-04	Target soil, Allen cottonfield	BQL<0.50 ppm	1.3 ppm
MM-05	Target soil, Allen cottonfield	BQL<0.50 ppm	4.1 ppm
MM-06	Target soil, Allen cottonfield	BQL<0.50 ppm	3.1 ppm

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:



N.C.G.S §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

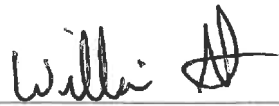
Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

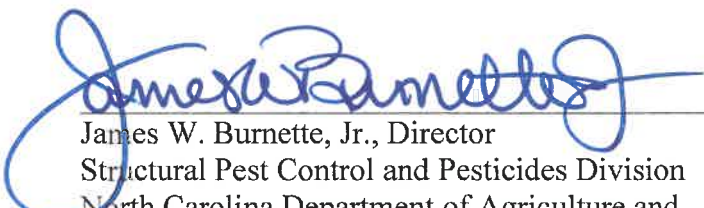
- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Mr. William Allen  
Jack Allen Farms  
1033 Branch Road  
Winterville, North Carolina 28590

6-20-16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

July 5, 2016  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

7/1/2016  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of July

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



IR2015-029

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

William Allen,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

William Allen, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-32

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
DAVID McGHEE, )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and David McGhee, Respondent.

1. At all times pertinent to this matter, Respondent was a Sales Representative for Helena Chemical Company, 13866 U.S. Highway 301 South, Rowland, North Carolina and held North Carolina Pesticide Dealer License No. 037-4355 and a South Carolina Pesticide License in Ornamental & Turf ("O&T").

2. On June 17, 2015, Complainant's Inspector Jimmy Merritt performed a pesticide inspection at Helena Chemical Company located at 13866 U.S. Highway 301 South in Rowland, North Carolina.

3. During review of the sales and application records, Complainant's Inspector noted three North Carolina customers as having fertilizers containing herbicides applied by Helena Chemical Company. The customer, date of purchase, and pesticide involved were:

- Fairmont Golf Club on 03/11/15  
0-0-7 w/.22% Dimension - EPA Reg. No. 5905-538
- Land-O-Lakes Golf Club on 04/04/15  
11-0-11 w/1.5% Oxadiazon - EPA Reg. No. 5905-569
- Fairmont Golf Club on 05/12/15  
30-0-10 w/1.5% Oxadiazon - EPA Reg. No. 5905-5694.

4. Complainant's Inspector inspected the departmental records of Helena Chemical Company and determined that no one associated with the company located in Rowland held a pesticide applicator license.

5. In March 2014, Complainant's Inspector had discussed with Respondent the commercial applicator requirements in North Carolina and recommended that if any fertilizer blend containing an herbicide was to be applied in North Carolina, then Respondent would need to obtain a reciprocal license for O&T in North Carolina in order to be compliant with North Carolina Pesticide Law.

6. In August 2014, Respondent indicated to Complainant's Inspector that he would contact North Carolina Pesticide Licensing and Certification to obtain his North Carolina O&T license immediately.

7. During Complainant's Inspector's interview with Respondent on June 17, 2015, Respondent admitted that he was at fault for not obtaining his North Carolina Pesticide License in O&T and that he was responsible for contracting with the three customers for the sales listed above and instructing a Helena Spreader Truck Driver, Richard Flowers, to perform the treatments.

8. Thereafter, Mike Findlay, Division Manager for Helena Chemical Company, wrote a letter to Complainant's Inspector indicating that Helena Chemical Company had applied fertilizers containing herbicides to the three customers listed above without possessing a valid pesticide applicators license. Mr. Findlay further indicated that Helena Chemical Company employees would be taking the necessary tests to obtain a license in the near future.

9. On August 11, 2015, Respondent secured his Pesticide Applicator License No. 026-33614.

10. The following pesticide was involved:

PRO-MATE® DIMENSION® 0.22% PLUS FERTILIZER Weed Control with Premium Lawn Food (dithiopyr), EPA Reg. No. 5905-538, a pyridine selective grass and broadleaf herbicide, Class III, Caution.

PRO-MATE OXADIAZON 1.5% PLUS FERTILIZER 30-0-10 W/ PCSCU (oxadiazon), EPA Reg. No. 5905-569, an oxadiazole preemergent grass and broadleaf herbicide, Class II, Warning.

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

02 NCAC 09L .0503(A) ---

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.

N.C.G.S. §143-452(a) ---

No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator.

N.C.G.S. §143-456(a)(5) and (15) ---

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of his Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



David McGhee  
Sales Representative, Helena Chemical Company  
13866 U.S. Highway 301 South  
Rowland, North Carolina 28383

5/20/16

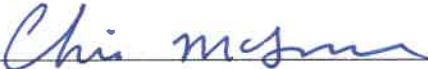
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

5/27/2016

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

5/25/2016

Date

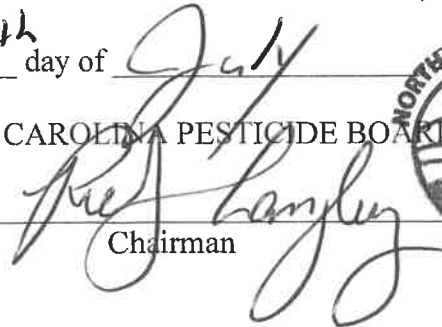
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APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of July

NORTH CAROLINA PESTICIDE BOARD

BY:



Chairman



IR2015-032

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

David McGhee,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

David McGhee, Respondent  
Patrick N. Farquhar, Eastern Field Manager



STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-40

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
FRANK D. JAMES, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Frank D. James, Respondent.

1. At all times relevant to this matter, Respondent, of James Lawn & Shrub located at 198 Durham Road in Clyde, North Carolina, held Commercial Applicator License No. 026-8359. Respondent's Commercial Applicator License expired on December 31, 2015.
2. On June 25, 2015, Complainant's Pesticide Inspector Bruce Nicely inspected the Restricted Use Pesticide (RUP) sales at Southern Ag in Hendersonville, North Carolina. During this inspection, Complainant's Inspector noted a sale of Diazinon AG 500 on June 11, 2015 to Respondent.
3. Due to the nature and unique restrictions on the use of Diazinon AG 500, Complainant's Inspector contacted Respondent to obtain more specific information on the application site for this pesticide.
4. On June 29, 2015, Complainant's Inspector interviewed Respondent and questioned him specifically on his use of Diazinon. Respondent admitted that he applied the product for grub control on the lawn of a residential property located in Whittier, North Carolina. Respondent further admitted that he had not read the label and was not aware that Diazinon was not approved for residential lawn use.

5. During the interview, Respondent verified that he had not applied this pesticide to any other site and provided complete and accurate records to Complainant's Inspector.

6. The pesticide involved in this investigation is as follows:

Diazinon AG 500, Diazinon, EPA Reg. No. 66222-9, Caution.

7. The label statement for the pesticide involved in this investigation reads as follows:

Diazinon AG 500:

"For control of certain insects on fruits, nuts, vegetables, and ornamentals grown outdoors in nurseries."

"Application is permitted only on commercial ornamentals grown outdoors in nurseries."

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443 (b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456(a) (2), (4), (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Eight Hundred Dollars (\$800.00) in eight (8) payments of One Hundred Dollars (\$100.00) each. Respondent's first payment of One Hundred Dollars (\$100.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining seven (7) installment payments, in the amount of One Hundred Dollars (\$100.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Eight Hundred Dollars (\$800.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent further acknowledges and agrees that Respondent has signed a Statement Authorizing Confession of Judgment, and that, if Respondent fails to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) per the payment installment plan outlined in 10(a), his Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Frank D. James

Frank D. James  
James Lawn & Shrub  
198 Durham Road  
Clyde, North Carolina 28721

5-17-16  
Date

James W. Burnette, Jr.

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

5/20/2016  
Date

Christopher R. McLennan

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

5/16/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of July, 2016

NORTH CAROLINA PESTICIDE BOARD

BY: [Signature]  
Chairman



2015-40

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Frank D. James.

**Respondent,**

Supplemental Information

Settlement conference was held with Frank D. James. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-044

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

TONY GODWIN,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Tony Godwin, Respondent.

1. At all times pertinent to this matter, Respondent owned and operated a pasture located at 4841 Smyrna Road, Whiteville, North Carolina 28472. At no time pertinent to this matter was Respondent licensed or certified as a pesticide applicator.
2. On July 21, 2015, Complainant's Inspector S. Jimmy Merritt received a call from Ms. Phyllis Greene, an agent with Columbus County Extension Service, regarding a conversation with Respondent pertaining to a pesticide application to his pasture that allegedly drifted and caused damage to an adjacent cotton field. Respondent wanted the alleged drift incident investigated because he was concerned that he would be liable for the damage and disputed any wrongdoing.
3. On that same day, Complainant's Inspector met with Ms. Greene and Respondent regarding the details of the pesticide application. Respondent reported that Mr. Melvin T. Ray, Jr. (Private Applicator No. 038-57174) approached him on July 20, 2015, regarding visible pesticide damage to Mr. Ray's cotton, which is located across the street from Respondent's 20-acre pasture. Respondent admitted that he performed an application of Weedar 64 (2,4-D) on June 17, 2015. Respondent also stated that he treated the roadside ditch on July 10, 2015 with Honcho Plus Herbicide using a hand sprayer.

4. During this interview, Ms. Greene stated that she observed the cotton field in question and it appeared to have herbicide drift damage with more visual symptoms observed near the highway and less damage on the backside of the field.
5. In response to Ms. Greene's observations, Respondent stated to Complainant's Inspector that he believed the drift originated from a source other than his pesticide applications.
6. On July 22, 2015, Complainant's Inspector interviewed Mr. Ray regarding the drift damage to his cotton field. Mr. Ray indicated that he did not want to upset Respondent but he wanted Respondent to be more aware and careful when making pesticide applications to his pasture because it appeared his cotton suffered drift damage from a 2,4-D pesticide application.
7. Mr. Ray stated that he spoke with Mr. Ellis Jordan (Private Applicator No. 038-77929), the individual who manages Mr. Ray's cotton field, and confirmed that Mr. Jordan only made two herbicide applications to the cotton field during the season. The first application consisted of Liberty and Dual Magnum, which were applied the first week of June. The second application consisted of Roundup Powermax II and Warrant, which were applied the first week of July. Mr. Jordan provided Complainant's Inspector all supporting application records and herbicide labels discussed during their interview.
8. In addition to the information provided by Mr. Jordan, Mr. Ray stated that he noticed the cotton damage as he drove by his cotton field on July 19, 2015, but stated that the cotton could have been showing symptoms a week earlier.
9. Based on the information gathered during the interviews conducted, Complainant's Inspector obtained samples and photographs of the target and non-target areas, which are detailed below:

#### NON-TARGET AREA

JM-032 - Vegetation sample was collected from the non-target area. Sample site was located 200 ft. SE from the cable gate corner post and 125 ft. NE from the center of Smyrna Road. Cotton plant material was collected from a 2-3 sq. ft. area.

JM-033 - Soil sample was collected from the non-target area. Sample site was located in the same area as JM-032. Soil was collected from a 2-3 sq. ft. area in the top 1-2 inches of soil.

JM-034 - Vegetation sample was collected from the non-target area. Sample site was located 200 feet SE from the cable gate corner post and 72 feet NE from the center of Smyrna Road. Cotton plant material was collected from a 2-3 sq. ft. area.

JM-035 - Soil sample was collected from the non-target area. Sample site was located in same area as JM-034. Soil was collected from a 2-3 sq. ft. area in the top 1-2 inches of soil.

JM-036 - Vegetation sample was collected from the non-target area. Sample site was located 200 ft. SE from the cable gate corner post and 15 ft. NE from the center of Smyrna Road. Sample was collected from a 2-3 sq. ft. area.

JM-037 - Soil sample was collected in the non-target area. Sample site was located in the same area as JM-036. Soil was collected from a 2-3 sq. ft. area in the top 1-2 inches of soil.

#### TARGET AREA

JM-038 - Vegetation sample was collected from the target area. Sample site was located 200 ft. SE from the cable gate corner post and 20 ft. SW from the center of Smyrna Road. Grass and weeds were collected from a 2-3 sq. ft. area in the dry ditch.

JM-039 - Soil sample was collected from the target area. Sample site was located in the same area as JM-038. Soil was collected from 2-3 sq. ft. area in the top 1-2 inches of soil.

JM-040 - Vegetation sample was collected from the target area. Sample site was located 200 ft. SE from the cable gate corner post and 130 ft. SW from the center of Smyrna Road. Hay was collected from a 2-3 sq. ft. area.

JM-041 - Soil sample was collect from target area. Sample site was located in the same area as JM-040. Soil was collected from a 2-3 sq. ft. area in the top 1-2 inches of soil.

JM-042 - Vegetation sample was collected from the target area. Sample site was located 200 ft. SE from the cable gate corner post and 300 ft. SW from the center of Smyrna Road. Hay was collected from a 2-3 sq. ft. area.

JM-043 - Soil sample was collected from the target area. Sample site was located in the same area as JM-042. Soil was collected from a 2-3 sq. ft. area in the top 1-2 inches of soil.

10. Based on the samples collected, the following lab results were obtained:

	<u><b>2,4-D</b></u>	<u><b>Glyphosate</b></u>	<u><b>AMPA</b></u>
JM-32 Non-target vegetation, Ray cotton	0.17 ppm	1.11 ppm	ND
JM-33 Non-target soil, Ray cotton field	ND	5.07 ppm	0.69 ppm
JM-34 Non-target vegetation, Ray cotton	0.042 ppm	BQL<0.500 ppm	ND
JM-35 Non-target soil, Ray cotton field	ND	1.84 ppm	0.65 ppm
JM-36 Non-target vegetation, Ray cotton	0.13 ppm	ND	ND
JM-37 Non-target soil, Ray cotton field	ND	1.37 ppm	BQL<0.250 ppm
JM-38 Target vegetation, Smyrna Rd. ditch	13.3 ppm	19.11 ppm	1.35 ppm
JM-39 Target soil, Smyrna Rd. ditch	0.39 ppm	3.67 ppm	1.22 ppm
JM-40 Target vegetation, Godwin hay	1.76 ppm	ND	ND
JM-41 Target soil, Godwin hayfield	0.044 ppm	1.43 ppm	0.39 ppm
JM-42 Target vegetation, Godwin hay	0.37 ppm	ND	ND
JM-43 Target soil, Godwin hayfield	0.013 ppm	26.5 ppm	0.52 ppm



11. Based on the lab results and investigation by Complainant's Inspector, the following pesticides were identified:

Weedar 64, 2,4-D amine, EPA Reg. No. 71368-1;  
Honcho Plus, Glyphosate, EPA Reg. No. 524-454;  
Liberty, Glufosinate, EPA Reg. No. 264-829;  
Dual Magnum, S-metolachlor, EPA Reg. No. 100-816;  
Roundup PowerMax II, Glyphosate, EPA Reg. No. 524-537; and  
Warrant, Acetochlor, EPA Reg. No. 524-591.

12. In addition to the samples collected and lab results performed, Complainant's Inspector provided photographs of the affected cotton field to Dr. Henry Wade. Dr. Wade analyzed the photographs and stated:

"I reviewed this case, including the photos taken by Jimmy Merritt. To a reasonable degree of scientific certainty, injury symptoms to the cotton was caused by the Weedar (2,4-D) application by Tony Godwin to his pasture that drifted to Melvin Ray's cotton."

13. The label for Weedar 64 Herbicide states the following:

**"Environmental Hazards ...** Do not apply this product directly to, or permit to drift onto cotton ... or other desirable crop or ornamental plants which are susceptible to 2,4-D herbicide. Do not apply near susceptible plants since very small quantities of the 2,4-D will cause severe injury during the growing or dormant periods. ... **DIRECTIONS FOR USE...SPRAY DRIFT MANAGEMENT...Wind Speed...**Only apply this product if the wind direction favors on-target deposition and there are not sensitive areas (including...nontarget crops) within 250 feet downwind. **SUSCEPTIBLE PLANTS ...** Do not apply under circumstances where spray drift may occur to ... other plantings that might be damaged or crops thereof rendered unfit for sale, use or consumption. Susceptible crops include ... cotton ...."

14. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

15. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty and/or action against a private applicator certification, which may be assessed by the Board as follows:

N.C.G.S §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.


16. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Six Hundred Dollars (\$600.00) in six (6) payments of One Hundred Dollars (\$100.00) each. Respondent's first payment of One Hundred Dollars (\$100.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining five (5) installment payments, in the amount of One Hundred Dollars (\$100.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Six Hundred Dollars (\$600.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469;

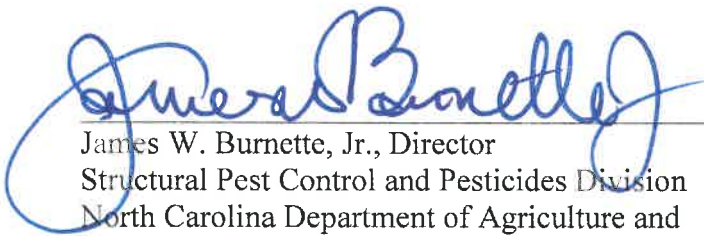
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent further acknowledges and agrees that Respondent has signed a Statement Authorizing Confession of Judgment, and that, if Respondent fails to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (e) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) per the payment installment plan outlined in 16(a), his Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 16(e) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 16(e) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

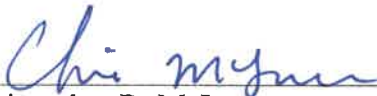
BY CONSENT:

  
Mr. Tony Godwin  
4811 Smyrna Road  
Whiteville, North Carolina 28472

5-6-16  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

5/20/2016  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

5/16/2016  
Date

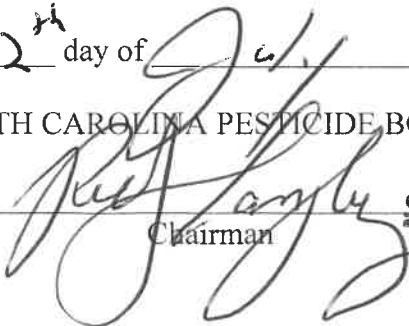
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APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of July, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



IR2015-044

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Tony Godwin,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Tony Godwin, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-55

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JAMESON QUINN,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Jameson Quinn, Respondent.

1. On August 3, 2015, Complainant's Inspector Paul Ward was performing a worker protection reinspection at Jameson Quinn Farms, LLC, 2310 Wintergreen Road, Cove City, North Carolina 28523.
2. During that inspection, Respondent confirmed the use of Envoke and Liberty on his tobacco fields at that location. After reviewing the labels for Envoke and Liberty, Complainant's Inspector determined that neither was labeled as approved for use on tobacco crops.
3. Complainant's Inspector then reviewed the application records provided by Respondent, which confirmed that Envoke was applied to the tobacco fields identified as "Raymond's Field" and "Jane's Field" on August 3, 2015. The records also indicate that Liberty was applied to "Jane's Field" on July 2, 2015.
4. Complainant's Inspector then obtained soil and vegetation samples from the target field. The lab results from the target samples revealed the following:

	<u>Glufosinate</u>	<u>Trifloxysulfuron-sodium</u>
PW-19 Target soil, Quinn tobacco field	0.48 ppm	0.006 ppm
PW-20 Target vegetation, Quinn tobacco	45.2 ppm	0.588 ppm
PW-21 Target soil, Quinn tobacco field	1.62 ppm	0.012 ppm

5. The pesticides involved in this investigation are as follows:

Liberty 280 SL Herbicide (glufosinate-ammonia), EPA Reg. No. 264-829, a non-selective postemergence herbicide, Class II, Warning.

Envoke Herbicide (trifloxysulfuron-sodium), EPA Reg. No. 100-1132, a sulfonylurea herbicide, Class III, Caution.

6. The label statements for the pesticides involved in this investigation read as follows:

*Liberty 280 SL Herbicide:*

“A non-selective herbicide for post emergence broadcast use on canola, corn, cotton, and soybean designated as LibertyLink®.”

*Envoke Herbicide:*

“A selective herbicide for control of certain broadleaf, sedge, and grass weeds in cotton, sugarcane, and transplanted tomato.”

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443 (b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456(a) (2), (4), (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty and/or action against a pesticide license or certification, which may be assessed by the Board as follows:

N.C.G.S § 143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder. . .

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.


9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

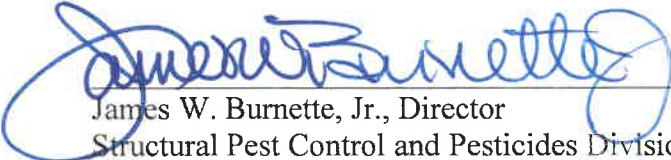


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Jameson Quinn  
Jameson Quinn Farms, LLC  
2310 Wintergreen Road  
Cove City, North Carolina 28523

4-24-16  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

4/27/2016  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

4/27/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of July, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Jameson Quinn,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

DAVID P. HRUPSA,

Respondent.

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File Nos. IR2013-053

IR2014-006

IR2014-079

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and David P. Hrupsa, Respondent.

#### IR2013-053 SUMMARY

1. At all times pertinent to this matter, Respondent was employed by Atlantic Ag Aviation, and held Aerial Applicator (Pilot) License No. (027) 594.
2. On July 12, 2013, Complainant's Inspector Chris Hassell investigated a complaint by Patricia Mansfield, NCDOT Environmental Roadside Management of Hertford, North Carolina. Ms. Mansfield reported that there had been extensive damage to the centipede turf on the Highway 64 right of way and to several lawns on Highway 94 near the Benson Rd. Exit. She suspected that an aerial application to a nearby soybean field had caused the damage. Inspector Hassell received a copy of the DOT Roadside Environmental spray records for the location.
3. Inspector Hassell inspected the area and noticed a large amount of dying grass in both the Hwy 64 and 94 right of ways for over one (1) mile, which ran parallel to each other as well as what appeared to be injury to nine (9) lawns. The damage pattern he saw in the lawns showed tapering off of damage as the distance increased from the lawns to the large soybean field on the south side of Hwy 64. Hwy 64 is a raised roadbed approximately 10 to 15 feet above the surrounding fields and lawns. He also found damage to pine trees that are approximately 20 feet tall located in the Benson Rd. exit median.

4. On July 15, 2013, Inspector Hassell met with Jesse Spruill who farms the field south of Highway 64. Mr. Spruill said he made no applications to the field, but he hired Respondent of Atlantic Ag Aviation to apply Roundup Herbicide to the field. He stated he was present on the day of application on the Hwy 64 right of way to detect if there was any drift and that he did not notice any.

5. Inspector Hassell then met with Cleve Edwards, Michael Harris, and George Hopkins, three of the owners of the adjacent lawns on Hwy 94. He took photographs of their lawns and samples from Mr. Hopkins' and Mr. Edwards' lawns. Inspector Hassell also took photographs of the other six (6) lawns that appeared to be damaged. He took photographs of and samples from the right of way on both Hwy 64 and Hwy 94 and samples from the Spruill soybean field. He returned and took additional samples on July 17, 2013, from the Benson Rd. right of way and an undamaged area near the right of way in the Spruill field.

6. The Edwards, Hopkins, Harris, and Swain properties had damaged lawn grass and damaged trees and shrubs. One tree in the Harris yard appeared to be dead. Mr. Harris reported it had been healthy before the incident. Inspector Hassell asked Mr. Harris, Mr. Edwards, Mr. Hopkins, and Ms. Swain whether they sprayed anything on their properties; all responded no, they had not. All four of them do their own lawn work and have not hired anyone to perform any lawn work. Inspector Hassell saw no signs of pesticide applications at any of the four (4) properties when Inspector Hassell looked at the trees and around the homes and outbuildings, other than the grass and plants the owners said had been damaged by the aerial application.

7. Inspector Hassell met with Respondent of Atlantic Ag Aviation on July 16, 2013. Respondent confirmed that he had made an aerial application of Roundup Herbicide to the Spruill soybean farm. Respondent stated that he did not notice any drift off of the property and gave Inspector Hassell a copy of his application record. The record reported the application was made on July 5, 2013, with a wind speed and direction of 5 knots from the southwest, at labeled rates.

8. Inspector Hassell interviewed all the farmers who own fields in the area. No other farmer reported having any aerial applications at all and there had been no ground applications in the past 30 days. Any ground applications made would have been over a half a mile away from the Hwy 64 and Hwy 94 right of way and a mile or more from the damaged lawns.

9. On July 15, 2013 the following samples were taken along with their location by Complainant's inspector:

CH016 nontarget vegetation sample from a rose bush in Edwards yard taken 58 feet from the northeast corner of Edwards house, 5 feet from the last light pole in Edwards yard, and 36 feet from the northwest corner of the Swain home.

CH017 and CH 018 nontarget vegetation and soil taken 72 feet from the southwest corner post of the Hopkins carport, 68 feet from the southwest corner of the Hopkins front porch, and 74 feet from the Hopkins front steps.

CH019 and CH020 nontarget vegetation and soil taken from Hwy 94 right of way, 12 feet from the fence post at the end of Edwards driveway, 10 feet from the south edge of Hwy 94, and 44 feet from Edwards mailbox.

CH021 and CH022 nontarget vegetation and soil taken from north side of Hwy 64 right of way, 36 feet from the 70 mph sign in front of Edwards house, 33 feet from the ditch between Highways 64 and 94, 10 feet from Hwy 64 pavement.

CH023 and CH024 nontarget vegetation and soil, taken from south side of Hwy 64 right of way, 20 feet from the road sign on the south side of Hwy 64 right of way, 12 feet from eastbound lane of Hwy 64, and 62 feet from the fence separating Hwy 64 from the Spruill soybean field.

CH025 and CH026 target vegetation and soil taken from the Spruill soybean field, 5 feet from the fence separating Hwy 64 right of way from field, 79 feet from eastbound lane of Hwy 64, and 97 feet from the road sign on the south side of Hwy 64 right of way.

On July 17, 2013 the following samples were taken in their locations:

CH027 and CH028 nontarget vegetation and soil taken from the west side of the Benson Rd, right of way, 14 feet from the pavement, 52 feet south of the first cedar tree on Benson Rd., and 19 feet north of the first pine tree on Benson Rd.

CH029 and CH030 buffer zone target vegetation and soil taken 19 feet from the state ditch on Benson Rd., 24 feet from the pavement on Benson Rd., and 54 feet from the first cedar on Benson Rd.

CH031 and CH032 target vegetation and soil taken 110 feet from the west field border, 100 feet from the north field border, and three (3) feet from the first field ditch.

Lab Results:

Sample	Type	Location	Glyphosate	AMPA
CH-16	Vegetation	Edwards home	3.4 ppm	ND
CH-17	Vegetation	Hopkins home	1.1 ppm	ND
CH-18	Soil	Hopkins home	0.18 ppm	BQL
CH-19	Vegetation	HWY 94	2.3 ppm	BQL
CH-20	Soil	HWY 94	ND	ND
CH-21	Vegetation	HWY 64	8.9 ppm	BQL
CH-22	Soil	HWY 64	0.16 ppm	BQL
CH-23	Vegetation	HWY 64	5.0 ppm	ND
CH-24	Soil	HWY 64	0.23 ppm	0.21 ppm
CH-25	Vegetation	Spruill soybean	BQL	ND

Sample	Type	Location	Glyphosate	AMPA
CH-26	Soil	Spruill soybean	0.16 ppm	0.16 ppm
CH-27	Vegetation	Benson Rd	BQL	ND
CH-28	Soil	Benson Rd	ND	ND
CH-29	Vegetation	Buffer Benson Rd	4.0 ppm	BQL
CH-30	Soil	Buffer Benson Rd	0.40 ppm	0.24 ppm
CH-31	Vegetation	Spruill soybean	7.0 ppm	BQL
CH-32	soil	Spruill soybean	0.82 ppm	0.21 ppm

10. The damage to the Highway 64 and 94 right of ways and to the Edwards, Hopkins, Harris, and Swain lawns resulted from aerial drift from the application made by Respondent to the Spruill Farms' soybean field.

11. Inspector Hassell met against on July 30, 2013 with Mr. Hopkins, Mr. Edwards, Mr. Harris, and Ms. Swain. He saw that their lawns were recovering. Their shrubs were also in improved condition. However, a tree near Hwy 94 in the Harris lawn appeared to be dead. The grass on the highway right of ways showed signs of recovery but the damage was still very noticeable. There was a large amount of dead grass visible. The tops of the trees in the Benson Road exit median continued to show extensive burn in the tops, but did not appear to be dying.

12. Inspector Hassell spoke with Ms. Mansfield and she stated that DOT planned to fertilize the area to try and lessen the damage to the turf on Hwy 64. It would replant as necessary over the nearly two (2) mile section of Hwy 64 right of way corridor. Due to the length of the damaged area and the width of the turf on Hwy 64 corridor, DOT estimated the damaged area of the right of way to be approximately 25 acres.

13. The Labeling Statement for Roundup Powermax states:

Do not allow the herbicide solution to mist, drip, or splash onto desirable vegetation, as minute quantities of this product can cause severe damage or destruction to the crop, plants, or other areas on which application was not intended.

AVOID CONTACT OF THIS HERBICIDE WITH FOLIAGE, GREEN STEMS, EXPOSED NON-WOODY ROOTS OR FRUIT OF CROPS (EXCEPT AS SPECIFIED FOR INDIVIDUAL ROUNDUP READY CROPS, DESIRABLE PLANETS AND TREES, AS SEVERE INJURY OT DESTRUCTION COULD RESULT.

14. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

“The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 09L .1005(c), (e) and (f)---

- (c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance;
- (e) No pesticide shall be deposited within 100 feet of any residence;
- (f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

15. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

#### IR2014-006 SUMMARY

16. At all times pertinent to this matter, Respondent was employed by Atlantic Ag Aviation, and held Aerial Applicator (Pilot) License No. (027) 594.

17. On March 21, 2014, Paul Ward received a call from Mr. Wade Elliott informing him that he had some wheat that was damaged from what he believed to be an aerial pesticide application to a field across the road from his wheat field on B Canal Road.

18. On March 24, 2014, Inspector Ward met Mr. Elliott at his farm shop. Mr. Elliott told Inspector Ward that he had seen an airplane spraying the field across from his wheat about 30 days or so ago. Mr. Elliott said that the wheat was looking good until the plane sprayed and

about a week later the wheat started turning. Mr. Elliott indicated that most of the damage was on the head row of the field on one end.

19. On March 25, 2014, Inspector Ward met with Respondent at his business. Respondent told Inspector Ward that he sprayed the field adjacent to Mr. Elliot's wheat field for Kevin Armstrong on February 7 and 9, 2014. Respondent said he used 5 oz. of Rifle, 1 quart of Roundup Power Max and LI 700 as a surfactant. His plane applied at a rate of 3.5 gallons per acre. Respondent's spray record indicate that there was a south breeze on both days.

20. On March 25, 2014, Inspector Ward met with Mr. Armstrong at his farm shop. Mr. Armstrong told Inspector Ward that he had not sprayed anything himself on the farm, but had hired Respondent to spray Roundup Power Max and Rifle.

21. On March 26, 2014, Inspector Ward met with Mr. Vernon Bell at his farm shop. Mr. Bell said that he had sprayed Roundup Power Max on part of the land next to Wade Elliott's wheat, but had not sprayed the cuts right beside the wheat. Mr. Bell sprayed on November 16, 2013 and had not sprayed since.

22. Inspector Ward went to the field and looked at the cuts that had and had not been sprayed. The cuts next to the Mr. Elliott's wheat had dying weeds in some areas, but it did not look like it came from Mr. Bell's application in November. At the time Mr. Bell sprayed his field with Roundup, the wheat had only been planted just a few days. Inspector Ward took photographs of the locations listed below.

23. On March 24, 2014 the following samples were taken along with their location by Inspector Ward:

**Sample Locations**

PW-001	Vegetation sample of wheat in cut # 2 of Wade Elliott's wheat.
PW-002	Soil sample in the wheat in cut # 2.
PW-003	Vegetation sample of wheat in cut #1 of Wade Elliott's wheat.
PW-004	Soil sample in the wheat in cut #1.
PW-005	Vegetation sample north r-o-w of B Canal Road.
PW-006	Soil sample in the north r-o-w of B Canal Road.
PW-007	Vegetation sample in south r-o-w of B Canal Road.
PW-008	Soil sample in south r-o-w of B Canal Road.
PW-009	Target vegetation sample in Kevin Armstrong's field.
PW-010	Soil sample in in Kevin Armstrong's field.
PW-011	Target vegetation sample in Kevin Armstrong's field.
PW-012	Soil sample in Kevin Armstrong's field.



Lab Results:

Sample	Location	Glyphosate	AMPA	Dicamba
PW-01	Vegetation, Elliott wheat, cut #2	ND	BQL<0.40 ppm	0.062 ppm
PW-02	Soil, Elliott wheat, cut #2	0.29 ppm	0.71 ppm	ND
PW-03	Vegetation, Elliott wheat, cut #1	BQL<0.40 ppm	BQL<0.40 ppm	0.068 ppm
PW-04	Soil, Elliott wheat, cut #1	0.35 ppm	0.35 ppm	0.023 ppm
PW-05	Vegetation, B Canal Rd north R-O-W	0.75 ppm	BQL<0.40 ppm	0.064 ppm
PW-06	Soil, B Canal Rd north R-O-W	ND	0.12 ppm	ND
PW-07	Vegetation, B Canal Rd south R-O-W	0.55 ppm	BQL<0.40 ppm	ND
PW-08	Soil, B Canal Rd south R-O-W	ND	0.11 ppm	ND
PW-09	Target vegetation, Armstrong field	ND	0.10 ppm	BQL<0.022 ppm
PW-10	Target soil, Armstrong field	ND	BQL<0.100 ppm	ND
PW-11	Target vegetation, Armstrong field	0.54 ppm	0.30 ppm	0.040 ppm
PW-12	Target soil, Armstrong field	0.27 ppm	0.21 ppm	0.028 ppm

24. Dr. Henry Wade reviewed the photographs from the case file and made the following comment, "I reviewed this case, including the photos taken by Paul Ward. The photos appear to show a possible herbicide drift pattern. However, due to the time that has elapsed since the aerial herbicide application occurred, the condition of plant tissue in the affected area has deteriorated. I cannot conclusively say that the damage was caused by this application, even though it may have caused it."

25. The Labeling Statement for Roundup Powermax states:

*Roundup Powermax Herbicide:*

"AVOID CONTACT OF THIS HERBICIDE WITH FOLIAGE, GREEN STEMS, EXPOSED NON-WOODY ROOTS OR FRUIT OF CROPS ..., DESIRABLE PLANTS AND TREES, AS SEVERE INJURY OR DESTRUCTION COULD RESULT. ...

Aerial Application Equipment ... Do not allow the herbicide solution to mist, drip, drift, or splash onto desirable vegetation, minute quantities of this product can cause severe damage or destruction to the crop, plants or other areas on which application was not intended. ...

**Sensitive Areas** Apply this product only when the potential for drift to adjacent sensitive areas (e.g. ... non-target crops) is minimal (e.g., wind is blowing away from the sensitive areas)."

26. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

“The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 09L .1005(c) and (f)---

- (c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance;
- (f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

27. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

## IR2014-079 SUMMARY

28. At all times pertinent to this matter, Respondent was employed by Atlantic Ag Aviation, and held Aerial Applicator (Pilot) License No. (027) 594.
29. On October 28, 2014, the Department received a complaint from Mr. Jack Respass alleging drift from an aerial pesticide application onto his property.
30. On October 29, 2014, Inspector Paul Ward met Mr. Respass, who explained that at 4:30 p.m. on October 6, 2014, Respondent made an application to Mike Harris' cotton and the wind was blowing at 15 MPH toward Mr. Respass' property. Mr. Respass said that he has found damaged vegetation on his property since this application. Inspector Ward observed trees on Mr. Respass' property that only had leaves on the side away from the cotton field and he observed specs on the salad greens and pumpkin leaves in the garden. Insp. Ward took photographs showing the conditions of the plants that may have been exposed to drift.
31. Inspector Ward contacted Mr. Mike Harris and Mr. Edward Scott. Mr. Scott told Mr. Ward that Respondent had been hired to defoliate the cotton with the airplane. Mr. Scott stated that Respondent had sprayed Ethephon for the first application and then had sprayed Ginstar, Aim and Ethephon the second time. Mr. Harris and Mr. Scott told Inspector Ward that they had not applied any defoliant themselves on this cotton field.
32. On October 30, 2014, Inspector Ward met with Respondent. Respondent told Inspector Ward that he had sprayed the cotton for Mike Harris on October 6, 2014. Respondent said that he applied Finish, Aim and Ginstar to the cotton. Respondent also told Inspector Ward that Mr. James L. Tucker had sprayed the same fields for him with Super Boll (ethephon) on October 1, 2014 by air.
33. On October 30, 2014, Inspector Ward met with Mr. Danny Respass. Mr. Respass farms the soybeans and rapeseed next to Mr. Jack Respass' property. Mr. Danny Respass said he had no damage to his rapeseed from the defoliant application because the rapeseed was not up yet. Mr. Danny Respass had applied only Treflan to the rapeseed around October 8, 2014. Mr. Danny Respass said the soybeans had been sprayed with Roundup sometime in July and were sprayed with an insecticide 3 times this year with a plane. The last time the plane sprayed the soybeans was sometime in late August.
34. Inspector Ward obtained a copy of the nearest daily weather report in the area. According to the data, the wind was at 187 to 190 degrees on the day and time Respondent made the application. The wind would be blowing towards Mr. Jack Respass' property.
35. On November 10, 2014, Inspector Ward met with Mr. Jamie Tucker who explained that he had applied Super Boll on the cotton in question. He had not applied Aim, Ginstar or Finish on the cotton.

36. On October 29, 2014 the following samples were taken along with their location by Inspector Ward:

**Sample Index:**

PW-056 Vegetation sample of Pumpkin leaves.  
PW-057 Soil sample in the same area as PW-056.  
PW-058 Vegetation sample of blueberry leaves.  
PW-059 Soil sample in the same area as PW-058.  
PW-060 Vegetation sample of Sycamore tree leaves.  
PW-061 Soil sample in the same area as PW-060.  
PW-062 Target soil sample in Mike Harris Cotton field on row #40.  
PW-063 Target vegetation sample of Mike Harris cotton leaves on rows 47, 48 and 49.  
PW-064 Target soil sample in the same area as PW-063.

**Lab Results:**

Sample	Location	Thidiazuron	Cyclanilide	Diuron	Carfentrazone-ethyl
PW-56	Vegetation, Jack Respass pumpkins	BQL < 4 ppb	ND	ND	0.96 ppb
PW-57	Soil, near Respass pumpkins	0.29 ppm	0.71 ppm	ND	
PW-58	Vegetation, Respass blueberries	BQL < 4 ppb	0.118 ppm	ND	0.045 ppm
PW-59	Soil, near Respass blueberries	0.58 ppb	ND	ND	ND
PW-60	Vegetation, Respass sycamore tree	0.017 ppm	0.398 ppm	0.154 ppm	0.067 ppm
PW-61	Soil, near Respass sycamore tree	0.003 ppm	ND	ND	ND
PW-62	Target soil, Harris Cotton, row #40	0.011 ppm	0.044 ppm	0.084 ppm	ND
PW-63	Target vegetation, Harris cotton, rows 47, 48 and 49	0.006 ppm	0.505 ppm	ND	BQL < 2 ppb
PW-64	Target soil, Harris cotton, rows 47, 48 and 49	0.010 ppm	0.019 ppm	0.044 ppm	ND

37. Dr. Henry Wade reviewed the photographs from the case file and made the following comment, "I reviewed this case, including the photos taken by Paul Ward on 10-29-14. To a reasonable degree of scientific certainty, injury symptoms to different plants on Jack Respass' property were caused by the aerial pesticide application made by [Respondent] on 10-6-14."

38. The Labeling Statements read:

*Finish 6 PRO:*

**““PRECAUTIONARY STATEMENTS ... ENVIRONMENTAL HAZARDS ...  
SPRAY DRIFT ... Do not apply when weather conditions may cause drift. Do not  
allow this product to drift on to non-target areas.”**

*Aim EC HERBICIDE:*

**“DIRECTIONS FOR USE ... SPRAY DRIFT MANAGEMENT ... Sensitive Areas  
– AIM EC shall only be applied when the wind is blowing away from adjacent sensitive  
areas (e.g. ... non-target crops).”**

*Ginstar EC Cotton Defoliant:*

**“PRECAUTIONARY STATEMENTS ... ENVIRONMENTAL HAZARDS ...** Do not apply when weather conditions favor drift from the target area. ...

**DIRECTIONS FOR USE ... SPRAY DRIFT MANAGEMENT FOR GROUND AND AERIAL APPLICATIONS ...** Do not apply when conditions favor drift from target areas.”

39. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

“The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 09L .1005(f)---

- (f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

40. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

SETTLEMENT – IR2013-053, IR2014-006 & IR2014-079

41. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Five Thousand Six Hundred Dollars (\$5,600.00) [\$2,300.00 for IR2013-053, \$1,800.00 for IR2014-006 and \$1,500.00 for IR2014-079] to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Five Thousand Six Hundred Dollars (\$5,600.00) in eight (8) payments of Seven Hundred Dollars (\$700.00) each. Respondent's first payment of Seven Hundred Dollars (\$700.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining seven (7) installment payments, in the amount of Seven Hundred Dollars (\$700.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Five Thousand Six Hundred Dollars (\$5,600.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469.
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Five Thousand Six Hundred Dollars (\$5,600.00) per the payment installment plan outlined in 41(a), this Agreement will constitute a civil penalty assessment of the Board of Five Thousand Six Hundred Dollars (\$5,600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 41(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 41(d) of this Agreement.


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

  
\_\_\_\_\_  
David P. Hrupsa

Atlantic Ag Aviation  
510 Beach Bay Road  
Roper, North Carolina 27970

2-9-16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director

Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

2/16/2016  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan

Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

2/12/16  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman

Chairman

13



IR2013-053RSA  
IR2014-006RSA  
IR2014-079RSA

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

David P. Hrupsa,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

David P. Hrupsa, Respondent  
Patrick N. Farquhar, Eastern Field Manager



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

David P. Hrupsa,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

David P. Hrupsa, Respondent  
Patrick N. Farquhar, Eastern Field Manager

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

David P. Hrupsa,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

David P. Hrupsa, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2013-54

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER SERVICES,  
STRUCTURAL PEST CONTROL AND  
PESTICIDES DIVISION,

Complainant,

v.

LEWIS D. WINSTEAD, III, & XTREME, INC.,

Respondents.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Lewis D. Winstead, III, & Xtreme, Inc., Respondents.

1. At all times pertinent to this matter, Respondent Lewis D. Winstead, III, (hereinafter, "Respondent Winstead") was the president of Xtreme, Inc., 142 Winstead Farm Road, Roxboro, Caswell County, North Carolina, and Xtreme, Inc., is a corporation incorporated and existing under the laws of the State of North Carolina.

2. On July 15, 2013, the Pesticide Section received a referral from Legal Aid of North Carolina, Inc., Farmworker Unit. Caitlin Ryland, Staff Attorney, reported that on or about July 11, 2013, David Diaz, an employee of Respondent Winstead had been exposed to pesticides while topping tobacco.

3. On July 16, 2013, Complainant's inspectors met with Respondent Winstead at his farm. Respondent Winstead stated that Mr. Diaz was no longer his employee.

4. While at the site Complainant's inspectors observed an employee, Amy Walker, mixing and loading:

Flupro (flumetralin), EPA Reg. No. 73631-2-400, a tobacco growth regulator, Class III, Caution; Royaltac-M (fatty alcohols), EPA Reg. No. 400-451, a tobacco growth regulator, Class I, Danger; and

Royal MH-30 (maleic hydrazide), EPA Reg. No. 400-84, a tobacco growth regulator, Class III, Caution, in shorts and a tee shirt.

5. When asked by Complainant's inspectors if she was provided personal protective equipment (PPE), she showed the inspectors a pair of cotton gloves.
6. Complainant's inspectors then performed a Worker Protection Standard inspection. The Respondent and Ms. Walker stated that they never spray when workers are in a field.
7. During the inspection and interviews it was determined that the Respondent:
  - failed to post a pesticide safety poster at a central location;
  - failed to maintain complete pesticide application records;
  - failed to provide pesticide safety training for workers and Ms. Walker, a handler;
  - failed to provide PPE according to labeling; and
  - failed to provide handler change of clothes.
8. After several attempts to contact Mr. Diaz, Complainant's inspector was able to arrange a meeting with him at 7:00 p.m. on July 22, 2013, at his home, 1716 Sunset Street in Roxboro, North Carolina. Mr. Diaz did not appear for the meeting and has not contacted Complainant's inspector.
9. The registered labels for Flupro, Royaltac-M and Royal MH-30 contain the following language:

**AGRICULTURAL USE REQUIREMENTS**

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170.

The registered label for Royaltac-M, the most restrictive labeling, contains the following language:

Mixers, Loaders, Applicators and Other Handlers Must Wear: long-sleeved shirt and long pants; shoes plus socks; chemical resistant gloves; and goggles or face shield.

10. As a result of its investigation, Complainant alleges that Respondents, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-440(b)---

- (b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C. Gen. Stat. § 143-443(b)(3)---

- (b) It shall be unlawful:
  - (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:
  - (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
  - (4) Operated in a faulty, careless, or negligent manner;
  - (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L.1805---

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."

§ 170.122 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

- (a) Location, accessibility, and legibility. The information shall be displayed in the location specified for the pesticide safety poster in § 170.135(d) and shall be accessible and legible, as specified in § 170.135(e) and (f).
- (b) Timing.
  - (2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.
  - (3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.
- (c) Required information. The information shall include:
  - (1) The location and description of the treated area.
  - (2) The product name, EPA registration number, and active ingredient(s) of the pesticide.
- (3) The time and date the pesticide is to be applied.
- (4) The restricted-entry interval for the pesticide.

§ 170.130 Pesticide safety training for workers.

(a) General requirement--

- (1) Agricultural employer assurance. The agricultural employer shall assure that each worker, required by this section to be trained, has been trained according to this section during the last 5 years, counting from the end of the month in which the training was completed.

§ 170.135 Posted pesticide safety information.

(c) Emergency medical care information.

- (1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster.

170.222 Providing specific information about applications.

When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, specific information about the pesticide.

- (a) Location, accessibility, and legibility. The information shall be displayed in the same location specified for the pesticide safety poster in § 170.235(d) of this part and shall be accessible and legible, as specified in § 170.235(e) and (f) of this part.
- (b) Timing.
  - (2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any such handler's first work period.
  - (3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until the handlers are no longer on the establishment, whichever is earlier.
- (c) Required information. The information shall include:
  - (1) The location and description of the treated area.
  - (2) The product name, EPA registration number, and active ingredient(s) of the pesticide.
  - (3) The time and date the pesticide is to be applied.
  - (4) The restricted-entry interval for the pesticide.

§ 170.230 Pesticide safety training for handlers.

- (a) Requirement. Before any handler performs any handling task, the handler employer shall assure that the handler has been trained in accordance with this section during the last 5 years, counting from the end of the month in which the training was completed.

§ 170.235 Posted pesticide safety information.

- (c) Emergency medical care information.
  - (1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster.

§ 170.240 Personal protective equipment.

- (a) Requirement. Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.
- (c) Provision. When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall provide the appropriate personal protective equipment in clean and operating condition to the handler.

02 N.C. Admin. Code 9L .1807---

- (1) Concerning application information requirements contained in Sections 170.122 and 170.222 the following is also required to be completed by the agricultural employer:
- (2) In addition to the requirements of Sections 170.122(c)(3), and 170.222(c)(3), the specific time of day when each pesticide application was completed must be recorded immediately upon completion of the application. Each day of the application shall be recorded as a separate record.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(d)---

- (d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations.


12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement;
- (e) That Respondent shall grant to the Complainant the right to enter and inspect all of his farms, facilities, records and employees under his supervision, including but not limited to interviewing all employees and contractors found at said farms and facilities, for the term of time set forth below. Said right to enter, interview and inspect shall not be limited as to the time of day or day of the week. Respondent shall immediately inform the Complainant of any acquisition, whether by purchase, lease or any other transaction, of any changes to its facilities and/or holdings in North Carolina. These promises and obligations and those set forth elsewhere in this paragraph as applicable to both Respondent and any corporation Respondent owns or may form in the future that is involved in Respondent's agricultural activities. Respondent's right to enter and inspect shall run for a term of three years, beginning on the date that the Pesticide Board approves this agreement.



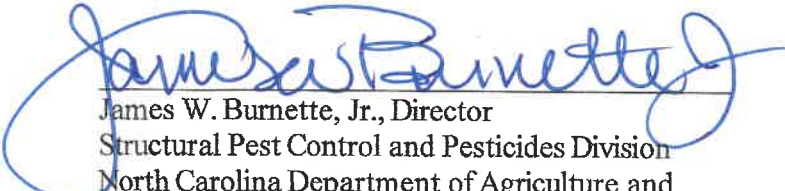
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

  
Lewis D. Winstead, III, Individually  
and as President of Xtreme, Inc.  
142 Winstead Farm Road  
Roxboro, North Carolina 27573


Date

12-18-15

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

Date

1-29-2016

  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

Date

1/14/2016


\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.  
Lewis D. Winstead

**Respondent,**

Supplemental Information

Settlement conference was held with Denise Cline, Attorney for Lewis D. Winstead.  
Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-019

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

CHRISTOPHER S. GRAY,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Christopher S. Gray, Respondent.

1. At all times pertinent to this matter, Respondent was the owner of Gray's Turf & Landscape Maintenance, 430 Hooks Road, Fremont, North Carolina 27830, and held Pesticide Applicator's License 026 16327.
2. On May 15, 2014, Complainant's Inspector Doug Bullard investigated a complaint made by Mr. Gary L. Hinton who alleged that his trees were killed and/or damaged by Respondent's pesticide application to his yard.
3. During the investigation, Mr. Hinton told Inspector Bullard that he hired Respondent to treat his yard for weeds starting in April 2013. According to Mr. Hinton, Respondent applied:
  - a) Prodiamine, Metsulfuron, and 2,4-D on April 11, 2013;
  - b) Honcho Plus and Orylazin on April 25, 2013;
  - c) Honcho Plus on July 20, 2013; and
  - d) Prodiamine, Metsulfuron, and 2,4-D on March 15, 2014.
4. Mr. Hinton told Inspector Bullard that he noticed the first tree dying on August 3, 2013 and the remaining trees dying on May 3, 2014.

5. On May 15, 2014, Complainant's Inspector went to Mr. Hinton's home, spoke with Mr. Hinton about the damage and inspected the damaged trees. Mr. Hinton confirmed that he had not applied any pesticides to his own yard.

6. On May 15, 2014, Inspector Bullard met with Respondent. Inspector Bullard asked Respondent if he had any idea why the trees may have died in Mr. Hinton's yard and Respondent replied that he did not. Respondent told Doug that he had used the same pesticides to treat other yards with no problems.

7. Complainant's Inspector collected a vegetation sample from one tree and two soil samples from around two trees in the Hinton yard:

DB-037	non-target vegetation
DB-038	target soil
DB-039	target soil

8. The following pesticides were involved:

Prodiamine 65 WDG Herbicide (prodiamine), EPA Reg. No. 66222-89, a dinitroaniline herbicide, Class III, Caution.

Rometsol (metsulfuron-methyl), EPA Reg. No. 83100-2-83979, a sulfonyleurea herbicide, Class III, Caution.

Weedar 64 (2,4-D), EPA Reg. No. 71368-1, a chlorinated phenoxy herbicide, Class I, Danger/Poison.

9. The label statements for the pesticides involved are as follows:

Rometsol Herbicide:

**"PRODUCT USE PRECAUTIONS ...** Injury to or loss of desirable trees or other plants may result if the precautions listed below are not followed.

- Do not apply Rometsol Herbicide (except as specified), or drain or flush equipment on or near desirable trees or other plants, or on areas where their roots may extend, or in locations where the chemical may be washed or moved into contact with their roots.

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)---

"It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S § 143-456 (a) (2) & (5)

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.


12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined

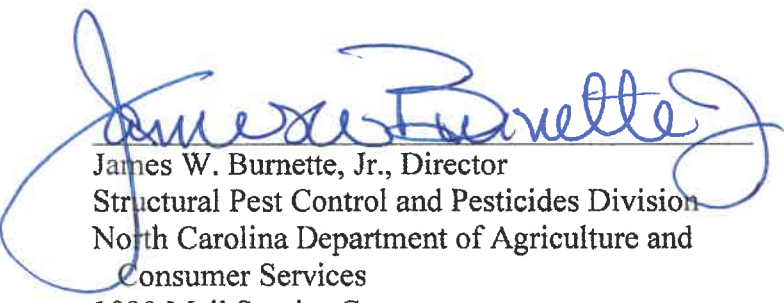
in N.C. Gen. Stat. § 143-469(d) may be instituted based on the civil penalty assessment contained in paragraph 12(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

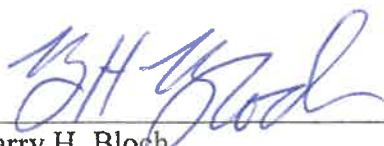
BY CONSENT:

  
\_\_\_\_\_  
Christopher S. Gray  
Gray's Turf & Landscape Maintenance  
430 Hooks Road  
Fremont, North Carolina 27830

1-4-2016  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-26-2016  
Date

  
\_\_\_\_\_  
Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

27 Jan 2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of Nov, 2015.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Christopher S. Gray,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Christopher S. Gray, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-22

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
JOSEPH PLITT, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and \*, Respondent.

1. On May 20, 2014, Pesticide Inspector Steve Taylor inspected J Landscaping while it was providing services at 4409 Lochurst Drive, Pfafftown, N.C. During this inspection one of the company's employees, Mr. Isaac Carrana Perez, was applying 5-0-10 fertilizer with 0.02% Prodamine, EPA Reg. No. 60063-45-41124.
2. On May 20, 2014, neither Joseph Plitt nor anyone employed by J Landscaping held a valid pesticide applicator's license issued by this Section.
3. On several occasions during the last four (4) years, Inspector Taylor has found Mr. Plitt applying pesticides with an expired license. Mr. Plitt maintains his certification but fails to renew his license annually. Mr. Plitt was warned in 2013 to renew his license and still failed to renew his license in 2014.
4. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:



N.C.G.S. §143-456(a) (2), (4), (5)

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:
  - (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
  - (4) Operated in a faulty, careless, or negligent manner;
  - (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

N.C.G.S § 143-452(a)

“No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.”

02 N.C. Admin. Code 09L .0503 (a)

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations. The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

- 5. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:


N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.
- 6. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:
  - (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board’s approval of this Agreement;

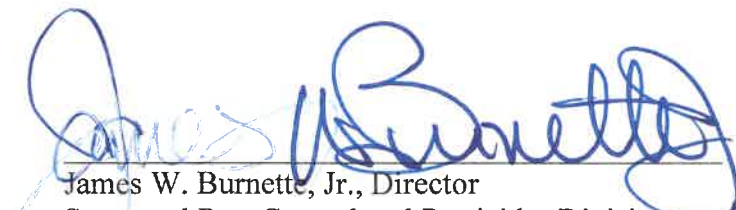
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 6(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 6(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

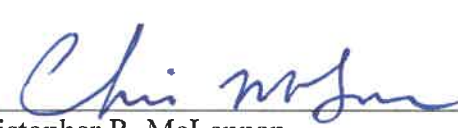
BY CONSENT:

  
\_\_\_\_\_  
Joseph Plitt  
J Landscaping  
400 Piccadilly Drive  
Winston-Salem, North Carolina 27104

7 Jan '16  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, NC 27699-1090

1/19/2015  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

1/13/16  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
\_\_\_\_\_  
Chairman



2014-22

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.  
Joseph Plitt

**Respondent,**

Supplemental Information

Settlement conference was held with Joseph Plitt. Respondent agreed to civil penalty with discussion.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-046

File No. IR2014-046

[illegible]

# SETTLEMENT AGREEMENT

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5. Complainant's Inspector obtained the following samples of the affected areas for analysis:

- MM-001 Approximately two pounds of vegetation taken from a camellia bush 31 feet south of Mr. Philipps' house and 158 feet south of the corn field north of Mr. Philipps' house.
- MM-002 Approximately two pounds of vegetation taken from a crepe myrtle tree 54 feet north east of Mr. Philipps' house and 12 feet south of the same corn field.
- MM-003 Approximately two pound of vegetation taken from a bald cypress tree 49 feet north of the corn field to the south of Mr. Philipps' house and 56 feet south of the propane tank and 71 feet east of Mr. Philipps' garage.
- MM-004 Approximately two pounds of vegetation taken from the grass in the west right of way of US Hwy 17 N 7.5 feet from the center line and 149 feet north of the utility pole on the corner of Mr. Philipps' property.
- MM-005 Approximately two pounds of vegetation taken from the grass in the west right of way of US Hwy 17 N 10 feet from the center line and 139 feet north of the utility pole and 25 feet west of Mr. Nobles corn.
- MM-006 Approximately two pounds of vegetation taken from Mr. Nobles' corn field 240 feet north of Mr. Philipps' yard and 240 feet east of US Hwy 17 N.

6. Complainant's Inspector received the following lab results for the samples taken:

		<u>Azoxystrobin</u>	<u>Propiconazole</u>
MM-01	Camellia bush vegetation 31' SW of Philipps' house	2.530 ppm	2.270 ppm
MM-02	Crepe Myrtle vegetation, 54' NE of Philipps' house	7.740 ppm	6.510 ppm
MM-03	Bald Cypress vegetation, Philipps' property	0.365 ppm	0.258 ppm
MM-04	Vegetation, West R-O-W of Hwy 17 N	6.990 ppm	4.230 ppm
MM-05	Vegetation, East R-O-W of Hwy 17 N	11.100 ppm	5.290 ppm
MM-06	Target vegetation, Nobles' cornfield	11.900 ppm	8.430 ppm

7. The Complainant's Inspector identified the following pesticides involved:

Quilt Xcel Fungicide (azoxystrobin, propiconazole), EPA Reg. No. 100-1324, a strobilurin/triazole fungicide, Class II, Warning.

8. Complainant's Inspector identified the following label statement from the pesticide involved:

*Quilt Xcel Fungicide:*

**"DIRECTIONS FOR USE ...**

**Spray Drift Management:** To avoid spray drift, do not apply when conditions favor drift beyond the target area. ... **ATTENTION** ... DO NOT spray when conditions favor drift beyond area intended for application. ...

**MIXING AND APPLICATION METHODS** ... Application Instructions ... Do not apply in a manner that will result in exposure to humans or animals."

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443 (b)(3) ----

It shall be unlawful for any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456(a) (2) and (5) ---

“The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;”

NCAC 09L .1005 (c) & (e)

“No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.

No pesticide shall be deposited within 100 feet of any residence.”

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay One Thousand Two Hundred Dollars (\$1,200.00) in six (6) payments of Two Hundred Dollars (\$200.00) each. Respondent's first payment of Two Hundred Dollars (\$200.00) shall be due within thirty (30) days of the date the Board approves this Agreement. Respondent's remaining five (5) installment payments shall be due at sixty (60) day intervals, with the second payment falling due sixty (60) days after Respondent's first payment becomes due. Each subsequent payment shall be due sixty (60) days after its preceding payment. Respondent's payments shall be considered to have been paid on time

if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay One Thousand Two Hundred Dollars (\$1,200.00) as provided herein may subject him to further disciplinary action as provided by G.S. § 106-65.28;

- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) per the payment installment plan, with the first payment received within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (d) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

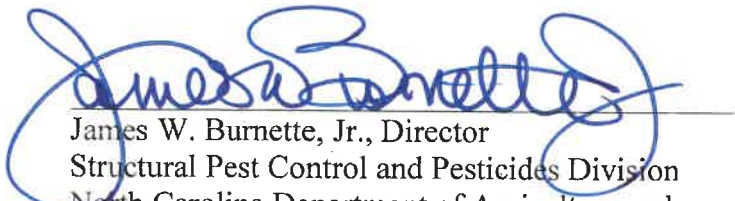


BY CONSENT:



Claude Eure  
4101 Walden Crossing Drive  
Canton, Georgia 30115

Feb 23, 2016  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

3/7/2016  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

3/11/2016  
Date

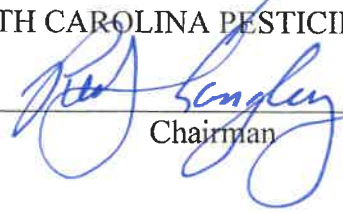
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APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:



Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Claude Eure,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Claude Eure, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

PAUL L. PERALA,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File Nos. IR2014-056  
IR2014-082

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Paul L. Peralá, Respondent.

1. At all times pertinent to this matter, Paul L. Peralá ("Respondent"), the operator of Southeast Woodland Services in Indian Trails, North Carolina, maintained Commercial Applicator License No. 026-16815.

#### IR2014-056 SUMMARY

2. On July 30, 2014, Complainant's Inspector Steve Gatton received notice of a complaint from Ms. Karen Stewart of Morrisville, North Carolina concerning a pesticide application to the right of way adjacent to her property that caused damage to her landscaping.

3. On July 30, 2014, Ms. Stewart indicated in her statement to the Pesticide Section that Duke Power maintained the right of way adjacent to her property and had contracted with Respondent, of Southeast Woodland Services, to make a pesticide application on the area. The application occurred on or about July 10, 2014.

4. On July 23, 2014, prior to contacting the Pesticide Section, Ms. Stewart contacted Respondent regarding the damage to her property caused by the application. Respondent agreed to meet with Ms. Stewart on July 30, 2014 to assess any damage. At that time, according to Ms. Stewart, Respondent denied an application was made on the right of way

on her property because his company did not make applications around trees or landscaping in residential areas. Respondent also stated that he would not compensate her for any of the alleged damages which resulted in her contacting the North Carolina Pesticide Section to seek additional assistance.

5. On July 31, 2014, Complainant's Inspector conducted an inspection of Ms. Stewart's property and noted dying vegetation around two large oak trees and a crepe myrtle tree. Ms. Stewart confirmed that neither she nor anyone in her family had applied any pesticides on her property.

6. Complainant's Inspector obtained the following sample from Ms. Stewart's property:

Sample	Location	Type	Glyphosate AMPA	Aminopyralid	Metsulfuron methyl	Imazapyr
SG-001	Stewart	veg	218 ppm 1.06ppm	5.15ppm	0.067ppm	25.3ppm

7. Based upon the samples collected, the following pesticides were identified:

Polaris Herbicide, Imazapyr,  
EPA Reg. No 228-534, Class III Caution

Milestone VM, aminopyralid,  
EPA Reg. No. 62719-537, Class III Caution

Rodeo Herbicide, Glyphosate,  
EPA Reg. No. 228-534, Class III Caution

Escort XP, Metsulfuron methyl,  
EPA Reg. No. 352-439, Class III Caution.

8. Inspector Gatton collected and recorded the following label statements for the pesticides involved:

Rodeo label states:

*"Avoid contact of herbicide with foliage, green stems, exposed non-woody roots or fruit of crops, desirable plants and trees, because severe injury or destruction may result"*

Milestone label states:

*"Do not apply this product on residential or commercial lawns, turf, or ornamental plantings"*

Escort XP label states:

*"Do not apply Dupont Escort XP Herbicide or drain or flush equipment on or near desirable trees or other plants....."*

*“Do not use on lawns, walks, driveways, tennis courts or similar areas”*

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)---

“It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.”

N.C.G.S § 143-456 (a) (2) (4) & (5)

“The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.”

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

#### IR2014-082 SUMMARY

11. On November 4, 2014, Complainant’s Inspector Jimmy Merritt investigated a complaint from NCDENR – Surface Water Protection Supervisor, Jim Gregson on the behalf of Complainant, Mr. Gordon Hobbs.

12. Mr. Hobbs reported to Inspector Merritt that an employee of Duke Power was spraying Duke Power’s right of way next to his property. Mr. Hobbs was concerned that herbicides being sprayed next to Sturgeon Creek, which runs adjacent to his property, drifted into the stream water supply and overspray damaged the vegetation on his property.

13. Inspector Merritt determined that Duke Power contracted with Southeast Woodland Services to make the application to the right of way. Respondent Paul Peralá was the applicator responsible for the application.

14. Inspector Merritt spoke with Respondent regarding the details of the application and Respondent stated that he was in constant contact with application crews. He also confirmed that no one on the crew was licensed. Respondent added that Southeast Woodland Services routinely holds training classes for their crews.

15. Inspector Merritt took a sample seven (7) feet out of the right of way and the results detected Glyphosate and Imazapyr. These active ingredients are ones found in the herbicides applied by Southeast Woodland Services.

16. Complainant's Inspector collected the following samples:

- JM-056 Vegetation sample was collected from the non-target area. Leaves and stems were collected from a 2-3 sq. ft. area. Sample site was located 124 ft. NW from the center of the Hobb driveway and 22 ft. SW from the center on the power line.
- JM-057 Soil sample was collected from the non-target area. Soil was collected from the top 2 inches in the same area where JM-056 was collected.
- JM-058 Vegetation sample was collected from the target area. Leaves and stems were collected from a 2-3 sq. ft. area located 121 ft. NW from the center of the Hobbs driveway and 9 ft. SW from the center of the ROW power line.
- JM-059 Soil sample was collected from the target area. Soil was collected from the top 2 inches of soil in the same area as JM-058.

17. Based upon the samples collected, the following pesticides were identified:

Polaris Herbicide, Imazapyr  
EPA Reg. No 228-534, Class III Caution

Rodeo Herbicide, Glyphosate  
EPA Reg. No. 228-534, Class III Caution

18. Laboratory testing revealed the following results:

Sample	Location	Type	Glyphosate AMPA	Imazapyr
JM-056	Hobbs	veg	10.4 ppm 0.93ppm	27.8ppm
JM-057	Hobbs	Soil	ND 0.26ppm	0.293ppm
JM-058	ROW	target	2.24ppm 0.64ppm	0.543ppm
JM-059	ROW	Target	ND 0.17ppm	0.090ppm

19. The label statements read as follows:

Polaris label states:

*"DO NOT APPLY OR DRAIN OR FLUSH ON OR NEAR SENSITIVE DESIRABLE PLANTS..."*

Rodeo label states:

*"AVOID CONTACT OF HERBICIDE WITH FOLIAGE, GREEN STEMS, EXPOSED NON-WOODY ROOTS OR FRUIT OF CROPS, DESIRABLE PLANTS AND TREES, BECAUSE SEVERE INJURY OR DESTRUCTION MAY RESULT."*

20. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443 (b)(3) ----

(b) It shall be unlawful:

- (3) "For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S. §143-456(a) (2), (4), (5)

(a) "The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board."

21. Each of the above violations of the North Carolina Pesticide Law and/or regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-469(b)---

"A civil penalty of not more than Two-thousand Dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article."

SETTLEMENT – IR2014-056 & IR2014-082

22. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Two Thousand Dollars (\$2,000.00) [\$800 for IR2014-056 + \$1,200 for IR2014-082 = \$2,000] to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Two Thousand Dollars (\$2,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Two Thousand Dollars (\$2,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 22(d) and waives said right by consenting to the terms of this Agreement. Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 22(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.



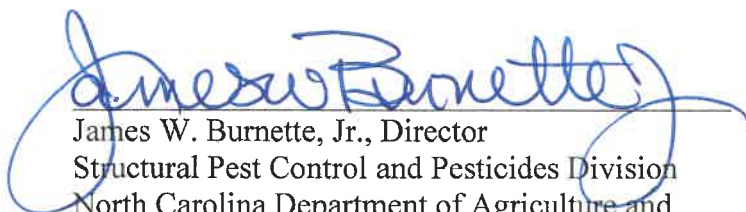
BY CONSENT:



Paul L. Perala  
Southeast Woodland Services  
6316 Trevor Simpson Drive  
Indian Trail, North Carolina 28079

1/4/2016

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-13-2016

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

1/12/16

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:



Chairman



2014-56  
2014-82

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,  
**Complainant,**

v.

Paul Perala  
**Respondent,**

Supplemental Information

Settlement conference was held with Paul Perala of Southeast Woodland Services.  
Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-064

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

LARRY M. LEE,

Respondent.

SETTLEMENT AGREEMENT

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Larry M. Lee, Respondent.

1. At all times pertinent to this matter, Respondent was the owner and operator of Lee Flying Service, Inc., and held Aerial Applicator (Pilot) License No. 027-335 and Aerial Applicator (contractor) License No. 028-335.
2. On August 19, 2014, Complainant's Inspector Paul H. Ward, III investigated a complaint by Burl Brinn, 1066 Hubs Rec Road, Belhaven, North Carolina, regarding an aerial application on August 15, 2014 which was intended for a soybean field adjacent to Highway 264 near Belhaven, North Carolina. Mr. Brinn reported that a mist fell from a yellow plane as it banked a turn next to Waters Road and this mist made contact with his arm and the windshield of his vehicle and resulted in pesticide exposure to his skin.
3. On that same day, Complainant's Inspector identified the owner of the target soybean field as Mr. David Burbage and Mr. Burbage confirmed that he hired Respondent of Lee Flying Service to perform an aerial application to his soybean field on August 15, 2014.
4. Upon further investigation on August 19, 2014, Complainant's Inspector met with Respondent to obtain information regarding the pesticides used during the aerial application of the soybean field in question. Respondent confirmed the use of Prevathon and Aproach Prima during the application, but denied that he would have cut the plane's booms on while executing a turn over a non-target field. Respondent also denied any leaks or spills over the non-target field during the application of the soybean field.

5. Based on the findings of his investigation, Complainant's Inspector collected vegetation and soil samples along the right of way of Highway 264 and the following lab results were reported:

**Lab Results**

	<u>Chlorantraniliprole</u>	<u>Cyproconazole</u>	<u>Picoxystrobin</u>
PW-048 Control swabs	ND	ND	ND
PW-049 Swab sample from Brinn car	31 ug	6.4 ug	ND
PW-050 Vegetation, Hwy 264 south ROW	0.92 ppb	ND	ND
PW-051 Soil, Hwy 264 south ROW	ND	ND	ND
PW-052 Vegetation, Hwy 264 north ROW	1.4 ppb	ND	ND
PW-053 Soil, Hwy 264 north ROW	ND	ND	ND
PW-054 Target vegetation, Burbage soybeans	5.56 ppm	1.9 ppm	1.8 ppm
PW-055 Target soil, Burbage soybeans	ND	ND	0.06 ppm

6. The lab results confirmed the following pesticides were involved in the aerial application:

Prevathon INSECT CONTROL (chlorantraniliprole), EPA Reg. No. 352-844, an anthranilic diamide insecticide, Class IV, Caution.

Approach Prima FUNGICIDE (picoxystrobin, cyproconazole), EPA Reg. No. 352-883, a strobilurin/ triazole fungicide, Class III, Caution.

7. The registered labels for the pesticides used during the aerial application contain the following language:

*Prevathon INSECT CONTROL:*

**“DIRECTIONS FOR USE ... AGRICULTURAL USE REQUIREMENTS ...**

Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”

*Approach Prima FUNGICIDE:*

**“DIRECTIONS FOR USE ...**

Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”

8. In addition to the above findings, Complainant's Inspector noted that the soybeans located east of Waters Road were 1,388 feet from the location of the right of way samples and the soybeans located to the west of the right of way samples were 3,080 feet away.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. §143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. §143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1005(c)

(c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. §143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

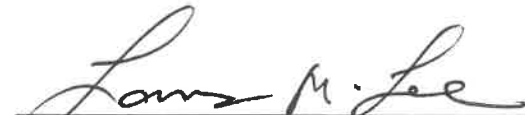
- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay One Thousand Dollars (\$1,000.00) in four (4) payments of Two Hundred Fifty Dollars (\$250.00) each. Respondent's first payment of Two Hundred Fifty Dollars (\$250.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining three (3) installment payments, in the amount of Two Hundred Fifty Dollars (\$250.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay

One Thousand Dollars (\$1,000.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469.

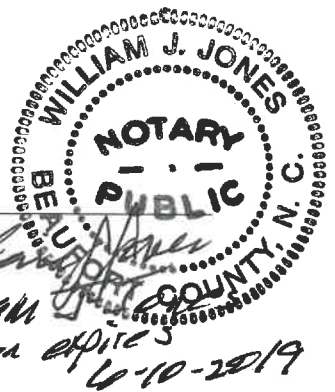
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent further acknowledges and agrees that Respondent has signed a Statement Authorizing Confession of Judgment in the amount of One Thousand Dollars (\$1,000.00), less any payments received, plus costs and interest at the State's legal rate, and that, if Respondent fails to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (e) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) per the payment installment plan outlined in 11(a), this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(e) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(e) of this Agreement.

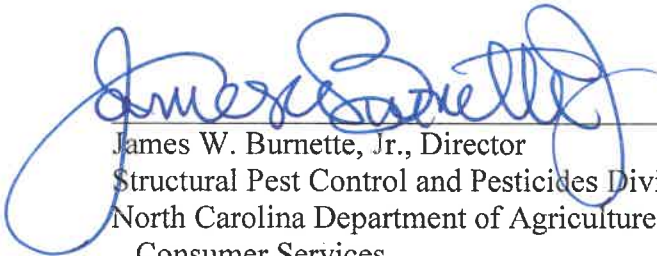
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

  
\_\_\_\_\_  
Larry M. Lee

Lee Flying Service, Inc.  
506 Vreugdenhil Road  
Pantego, North Carolina 27860

2-19-16  
Date  
notary William J. Jones  
William J. Jones  
My commission expires 10-10-2019  


  
\_\_\_\_\_  
James W. Burnette, Jr., Director

Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

3/10/2016  
Date

  
\_\_\_\_\_  
Christopher R. McLennan

Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

3/9/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman

5



IR2014-064RSA

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Larry M. Lee,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Larry M. Lee, Respondent

Patrick N. Farquhar, Eastern Field Manager



BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-065

Respondent.

# SETTLEMENT AGREEMENT

3. Complainant's inspector confirmed that Respondent is the licensed pesticide dealer (No. 037-3990) for Helena Chemical Company. All sales tickets generated by Gore and Sons are sent to Helena Chemical, matched with invoices and maintained in Helena Chemical's files marked for Mr. Gore's facility.

4. Based on the information obtained from Mr. Gore, Complainant's Inspector performed an inspection of Helena Chemical Company's files as it pertained to Gore and Sons RUP dealer sales records. Upon review of the sales records, Complainant's Inspector identified an RUP sale, invoice no. 58400791 for 50 gallons of Gramoxone SL 2.0, EPA Reg. No. 100-1431, billed to "Jerry Lee Gore," but noting "Customer pickup-Myles Cartrette." The records further reflect that the pesticide Gramoxone was received by Donna Cartrette.

5. During the investigation, Complainant's Inspector determined that neither Mr. Cartrette nor Ms. Cartrette held a private applicator certification or license, and therefore sought further explanation from Mr. Gore as to the reason he authorized the sale to Mr. Cartrette. Mr. Gore denied that Mr. Cartrette was a customer of Gore and Sons and did not know any details regarding the sale of Gramoxone to Mr. Cartrette.

6. On August 21, 2014, Complainant's Inspector returned to Helena Chemical Company to speak with Respondent to obtain information regarding the RUP sale on June 10, 2014 to Mr. Cartrette. Respondent indicated that he was responsible for the sale and that Mr. Gore was not aware of any details regarding the transaction. Respondent further explained that he sold the product to Mr. Cartrette based on his confirmation that the product would be applied by Mr. Cartrette's cousin, Dalan Hobbs, who did possess a private pesticide certification/license.

7. Due to credit billing issues, Respondent admitted that he billed the product sold to Mr. Cartrette to Jerry Gore's account without Mr. Gore's knowledge or consent. Respondent acknowledged his mistake in documenting the transaction properly, but stated that he was not trying to falsely represent any sales records.

8. Upon further investigation, Complainant's Inspector did confirm that the product purchased on June 10, 2014 was in fact applied to Mr. Cartrette's fields between July 1 and 2, 2014 by Dalan Hobbs, Private Applicator Certification No. 038-74588.

9. The following pesticide was involved:

Gramoxone SL 2.0 Herbicide (paraquat), EPA Reg. No. 100-1431, a bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-451(a) (3), (7) and (13)---

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

Made false or fraudulent records, invoices, or reports;

Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 NCAC 09L .1302 ---

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

02 NCAC 09L .1305 (2), (3), (4) and (5)---

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

initials of sales clerk;

name of certified or licensed applicator;

certification or license number of certified or licensed applicator;

certification or license expiration date as shown on the certified or licensed applicator's certification card.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(b)---

A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Four Hundred Dollars (\$1,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Four Hundred Dollars (\$1,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Four Hundred Dollars (\$1,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Scott L. Hooks  
Scott L. Hooks  
Helena Chemical Company  
747 West Virgil Street  
Whiteville, North Carolina 28472

April 25, 2016  
Scott L. Hooks  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

5/9/2016  
Date

Chris McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

5/3/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY: Pat Langley  
Chairman



IR2014-065RSA

2014-065

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Scott L. Hooks,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Scott L. Hooks, Respondent  
Patrick N. Farquhar, Eastern Field Manager

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-070

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

CAREY F. CARR.

Respondent.

# SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Carey F. Carr, Respondent.

1. At all times pertinent to this matter, Respondent was the licensed pesticide dealer (License No. 037-3286) for Parkway Ag Center, Inc., located at 5470 North Carolina 42 West, Macclesfield, North Carolina 27852.
2. On September 9, 2014, Complainant's Inspector John H. Colborne conducted a Restricted Use Pesticide ("RUP") Sales Records Inspection of the Parkway Ag Center, Inc. facility in Macclesfield, North Carolina. The records indicate that Respondent is the manager of the facility and the licensed pesticide dealer (License No. 037-3286) for the Parkway Ag Center, Inc. Macclesfield facility. During that inspection, Complainant's Inspector discovered nine (9) RUP cash sales records that failed to include the name, certification/license numbers or expiration date of the purchaser's certification/license numbers on seven (7) separate invoices.
3. During the investigation by Complainant's Inspector, Respondent accepted responsibility for all RUP sales made from the Macclesfield facility and acknowledged that he was aware that the sales listed below violated state law:

<u>Invoice #</u>	<u>Date</u>	<u>Restricted-Use-Pesticide</u>
M12253	4/28/2014	Mocap 15% Granular
M12351	5/31/2014	Asana XL, Bicep II Magnum, Chlorpyrifos 4E
M12353	5/31/2014	Gramoxone SL

M11242	7/3/2014	Perm-Up
M11243	7/3/2014	Gramoxone SL
M10956	8/7/2014	Atrazine 4L
M10970	8/7/2014	Chlorpyrifos 4E

4. Respondent willingly informed Complainant's Inspector that he was previously cited for the same violations in 2013.

5. The RUPs involved in these cash sales were:

Gramoxone SL Herbicide (paraquat), EPA Reg. No. 100-1217, a bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison

Bicep II Magnum Herbicide (s-metolachlor, atrazine), EPA Reg. No. 100-817, a chloroacetamide/ triazine herbicide, Class III, Caution.

Atrazine 4L Herbicide (atrazine), EPA Reg. No. 19713-11, a triazine herbicide, Class III, Caution.

Chlorpyrifos 4E AG Insecticide (chlorpyrifos), EPA Reg. No. 66222-19, an organophosphate insecticide, Class II, Warning.

Mocap 15% Granular Nematicide-Insecticide (ethoprop), EPA Reg. No. 264-457, an organophosphate insecticide, Class I, Danger-Poison.

Asana XL insecticide (esfenvalerate), EPA Reg. No. 352-515, a pyrethroid insecticide, Class II, Warning.

PERM-UP 3.2EC INSECTICIDE (permethrin), EPA Reg. No. 70506-9, a pyrethroid insecticide, Class III, Caution.

6. The label statements for all products listed above read:

"RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ..."

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-451(a) (3), (5) and (6) ---

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:



Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection.”

02 NCAC 09L .1305 (3), (4) and (5)---

“All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

name of certified or licensed applicator;

certification or license number of certified or licensed applicator;

certification or license expiration date as shown on the certified or licensed applicator's certification card.”

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(b)---

“A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.”

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Two Thousand Four Hundred Dollars (\$2,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Two Thousand Four Hundred Dollars (\$2,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Two Thousand Four Hundred Dollars (\$2,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Carey F. Carr  
Mr. Carey F. Carr  
Parkway Ag Center, Inc.  
5470 North Carolina 42 West  
Macclesfield, North Carolina 27852

2-10-16  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

2/19/2016  
Date

Christopher R. McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

2/26/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

Pat Langley  
Chairman



2014-070

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Carey F. Carr,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File No. IR2014-075

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

THOMAS A. SARTAIN, JR. )

Respondent. )

SETTLEMENT AGREEMENT

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Thomas A. Sartain, Respondent.

1. At all times pertinent to this matter, Respondent Thomas A. Sartain, Jr., was an Aerial Applicator (License Nos. 027-855 and 028-736) for Industrial Helicopters, Inc., Post Office Box 61906 in Lafayette, Louisiana 70596.
2. On October 10, 2014, Complainant's Inspectors Eddie Nunn and Steve Gatton responded to a complaint from Ms. Barbara Gomez of 2300 June Johnson Road in Raeford, North Carolina who was concerned for her health, pets and property following an aerial pesticide application made to the forestry site adjacent to her residence.
3. On October 13, 2014, Complainant's Inspector Nunn interviewed Mr. Jeff Tapley with Crop Production Services, who supervised the application. During the interview, Mr. Tapley indicated that Respondent, with Aerial Applicator License Nos. 027-855 and 028-736, was working for Industrial Helicopters, Inc., and was responsible for the application.
4. Following the interview with Mr. Tapley, Complainant's Inspector followed-up with Ms. Gomez, and her husband Carlos Gomez. During that interview, Complainant's Inspector determined that Mr. Gomez witnessed the mist from the application coming over the fence separating the forestry site and their property. Also, Ms. Gomez reported that she could taste the chemical being sprayed and was concerned exposure could cause eye damage or contamination of their pond, which was located on their property.

5. Complainant's Inspector then proceeded to obtained samples of the affected areas for further analysis.

#### **Samples Index**

EN-29, Vegetation (oak) taken 57' from NW corner of residence, 8' from fence.  
EN-30, Vegetation (cherry) taken 67' from SW corner of residence, 3' from fence.  
EN-31, Soil sample taken 94' from NW corner, 29' from fence, 41' from pine tree.  
EN-32, Vegetation (maple) taken 61' from fence, 126' from NW corner, 63' from pine.  
EN-33, Soil sample taken 72' from fence, 137' from NW corner, 11' behind EN-032.

6. Complainant's Inspector noted the following lab results from the samples taken:

<b>SAMPLE NO.</b>	<b>TYPE</b>	<b>LOCATION</b>	<b>IMAZAPYR</b>
<b>EN-29</b>	<b>VEG</b>	<b>57' A. GOMEZ RES.</b>	<b>0.133 ppm</b>
<b>EN-30</b>	<b>VEG</b>	<b>67' A. GOMEZ RES.</b>	<b>0.080 ppm</b>
<b>EN-31</b>	<b>VEG</b>	<b>94' A. GOMEZ RES.</b>	<b>0.013 ppm</b>
<b>EN-32</b>	<b>VEG</b>	<b>TARGET</b>	<b>9.010 ppm</b>
<b>EN-33</b>	<b>SOIL</b>	<b>TARGET</b>	<b>1.280 ppm</b>

7. The Complainant's Inspector identified the following pesticides involved:

Arsenal Herbicide Applicators Concentrate, Isopropylamine salt of imazapyr: (244,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl 1-3-pyridinecarboxylic acid), EPA Reg. No. 241-299, Caution, Class IV.

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-456(a) (2) and (5) ---

"The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board."

NCAC 09L .1005 (e) (f)

No pesticide shall be deposited within 100 feet of any residence.

No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

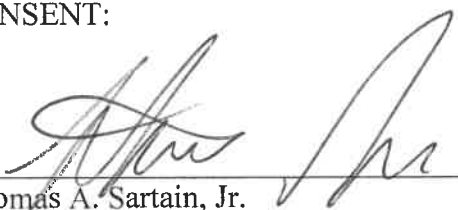
A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

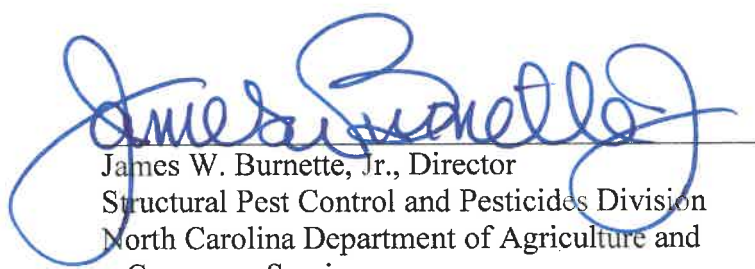
- (a) That Respondent agrees to pay the sum of One Thousand Four Hundred Dollars (\$1,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Four Hundred Dollars (\$1,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Four Hundred Dollars (\$1,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Mr. Thomas A. Sartain, Jr.  
Industrial Helicopters, Inc.  
Post Office Box 61906  
Lafayette, Louisiana 70596

3-3-16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

3/31/2016  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

3/24/2016  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman





2014-75

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Thomas A. Sartain, Jr.

**Respondent,**

Supplemental Information

Settlement conference was held with Thomas A. Sartain, Jr.  
Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-76

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
JEFF L. WEBB, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Jeff L. Webb, Respondent.

1. At all times pertinent to this matter, Respondent was the manager of Parkway Ag Center, Inc., 2801 Industrial Parkway, Tarboro, North Carolina and held Pesticide Dealer License No. 037-3555.

2. On October 14, 2014, Complainant's Inspector, John Colborne inspected Parkway Ag Center, Inc.'s records for the sale of Restricted Use Pesticides ("RUPs") and determined that seven (7) cash sales of RUPs were made on April 2, April 3, May 13, May 31, Jun 3, June 4, and June 6, 2014.

3. No name, license number, or other required information was recorded for five (5) of these RUP sales. Specifically, Inspector Colborne noted that the following elements were omitted from Parkway Ag Center Inc.'s RUP sales receipts:

Initials of sales clerk;

Name of certified or licensed applicator as set out in 02 NCAC 09L .1302  
or employees as set out in 02 NCAC 09L .1303;

Certification or license number of certified or licensed applicator as set out  
in 02 NCAC 09L .1302;

Certification or license expiration date as shown on the certified or licensed applicator's certification card; and

EPA registration number.

4. On two of the cash RUP sales, Inspector Colborne noted the purchasers as William K. Dupree (sale invoice for Atrazine 4L dated April 2, 2014) and Linwood Edmondson, Jr. (sales invoices for Chlorpyrifos 4E dated May 31, 2014). Mr. Dupree has no record of holding a private pesticide applicator license and Mr. Edmondson's Private Applicator License No. 038-4215 expired in 2006. During Inspector Colborne's investigation, Mr. Dupree and Mr. Edmondson admitted to purchasing the RUP products. Mr. Dupree and Mr. Edmondson indicated to Inspector Colborne that they did not realize the products were restricted and both agreed to obtain a private pesticide applicator license.

5. The following pesticides were involved:

Chlorpyrifos 4E, (chlorpyrifos), EPA Reg. No. 66222-130, Class II, Warning.

Atrazine 4L, (atrazine), EPA Reg. No. 19713-11, Class III, Caution.

Bicep II Magnum Herbicide (s-metolachlor, atrazine), EPA Reg. No. 100-817, a chloroacetamide/ triazine herbicide, Class III, Caution.

Bifen 2 Ag Gold, EPA Reg. No. 83222-1, Class II, Caution.

6. The Label Statement on the pesticides read as follows:

**RESTRICTED USE PESTICIDE**

For sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification.

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. 143-443(b) (3) ----

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-451(a)(3), (5), (6), (8), (9) and (13)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection;

Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

#### 02 NCAC 09L .1302

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

#### 02 NCAC 09L .1306

Prior to making restricted use pesticides available to those identified in 02 NCAC 09L .1302 or the employee as identified in 02 NCAC 09L .1303, the pesticide dealer or the designated representative of the pesticide dealer must verify the identity of the recipient.

#### 02 NCAC 09L .1305

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (2) initials of sales clerk;
- (3) name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;
- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card;
- (7) EPA registration number;

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Three Thousand Dollars (\$3,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Three Thousand Dollars (\$3,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Three Thousand Dollars (\$3,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

✓ Jeff L. Webb

Jeff L. Webb  
Manager, Parkway Ag Center, Inc.  
2801 Industrial Parkway  
Tarboro, North Carolina 27886

2/17/16  
Date

James W. Burnette, Jr.

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

2/23/2016  
Date

Christopher R. McLennan

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

2/26/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY: [Signature]

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.  
Jeff L. Webb

**Respondent,**

Supplemental Information

Settlement conference was not held with Jeff L. Webb. Respondent agreed to civil penalty without discussion.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2014-77

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

THOMAS E. LOWE,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Thomas E. Lowe, Respondent.

1. At all times pertinent to this matter, Respondent was the manager of Parkway Ag Center, Inc., 6006 Bear Grass Road, Williamston, North Carolina, Dealer License No. 037-3263.

2. On October 15, 2014, Complainant's Inspector John Colborne inspected Parkway Ag Center, Inc. in Williamston, North Carolina and reviewed records for the sale of Restricted Use Pesticides ("RUPs"). In reviewing these records, Complainant's Inspector determined that a cash sale of an RUP (Parazone 3SL) was made on July 31, 2014 and no name, license numbers, or other required information was recorded for the sale.

3. Inspector Colborne questioned Mr. James E. Harris, an unlicensed private applicator and an employee of Parkway Ag Center, Inc. Mr. Harris admitted to purchasing a partial container of Parazone 3SL and using it on a food plot for deer.

4. Inspector Colborne noted additional elements that were omitted from Parkway Ag Center Inc.'s RUP sales receipt were:

- (1) Initials of sales clerk;
- (2) Name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;
- (3) Certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;



- (4) Certification or license expiration date as shown on the certified or licensed applicator's certification card; and
  - (5) EPA registration number.
5. The following pesticide was involved:
- Parazone 3SL, (paraquat dichloride), EPA Reg. No. 66222-130, Class I, Danger-Peligro
6. The Label Statement for the pesticide involved reads:

**RESTRICTED USE PESTICIDE**

For sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification.

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. 143-443(b) (3) ----

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-451(a)(3), (5), (6), (8), (9) and (13)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection;

Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 NCAC 09L .1302

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

02 NCAC 09L .1306

Prior to making restricted use pesticides available to those identified in 02 NCAC 09L .1302 or the employee as identified in 02 NCAC 09L .1303, the pesticide dealer or the designated representative of the pesticide dealer must verify the identity of the recipient.

02 NCAC 09L .1305

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (2) initials of sales clerk;
- (3) name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;
- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card;
- (7) EPA registration number;

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Two Thousand Five Hundred Dollars (\$2,500.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Two Thousand Five Hundred Dollars (\$2,500.00) in ten (10) payments of Two Hundred Fifty Dollars (\$250.00) each. Respondent's first payment of Two Hundred Fifty Dollars (\$250.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining nine (9) installment payments, in the amount of Two Hundred Fifty Dollars (\$250.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked

on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Two Thousand Five Hundred Dollars (\$2,500.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469.

- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent further acknowledges and agrees that Respondent has signed a Statement Authorizing Confession of Judgment, and that, if Respondent fails to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Two Thousand Five Hundred Dollars (\$2,500.00) per the payment installment plan outlined in 9(a), this Agreement will constitute a civil penalty assessment of the Board of Two Thousand Five Hundred Dollars (\$2,500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(d) of this Agreement.
- (e) Within fifteen (15) days of the Boards approval of this Agreement, Respondent agrees to display one sign at every location or business in which RUPs are sold under Respondent's Pesticide Dealer License that contains the following language:

“02 North Carolina Administrative Code 9L .1302


It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.”

Each sign shall remain displayed at all times in a prominent area of each such location or business, such that it can be readily seen and read by employees and customers. Each sign shall be at least 14 inches by 24 inches. Letters for all words must remain clearly visible and legible. Respondent's failure to display a

sign as required by this Agreement shall constitute a violation of a lawful order of the Board as contemplated in N.C.G.S. § 143-451(a)(2) and may result in further disciplinary action by the Board against Respondent.

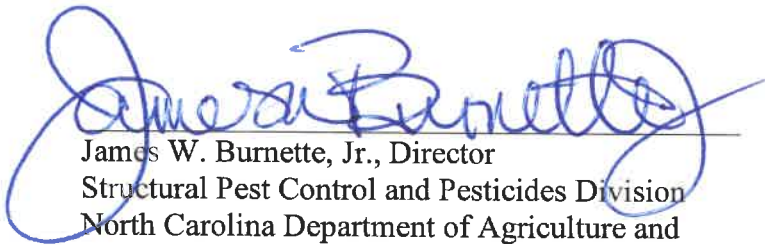
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Thomas E. Lowe, Jr.  
Manager, Parkway Ag Center, Inc.  
6006 Bear Grass Road  
Williamston, North Carolina 27892

3-31-16  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

4/5/2016  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

4/4/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:



Chairman



2014-77

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Thomas E. Lowe, Jr.

**Respondent,**

Supplemental Information

Settlement conference was held with Thomas E. Lowe, Jr.  
Respondent agreed to civil penalty with discussion.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-002A

Respondent.

## SETTLEMENT AGREEMENT

3. The March 6, 2015 anonymous complaint named two specific farmers, Cyrus Thomas Bryan and Brent C. Horne. On March 9, 2015, based on the allegations of the complaint, Complainant's Inspector Douglas P. Bullard went to Mr. Bryan's farm and inspected Mr. Bryan's pesticide storage area where Inspector Bullard found the RUP Bicep II Magnum. Mr. Bryan stated that it was purchased from Sholar Farm Supply and applied to his fields.

4. Complainant's Inspector also noted that during the inspection he observed a trash pile near Mr. Bryan's storage area which contained Bicep II Magnum pesticide containers with a release date of January 2014 printed on them. Mr. Bryan stated these containers were rinsed out prior to being burned. Mr. Bryan also admitted that his private applicator certification expired in 2000.

5. Following the inspection of Cyrus Thomas Bryan's farm, Complainant's met with Mr. Brent C. Horne, who stated that he farmed in partnership with Daniel G. King, Certification No. 026-28968, but that Mr. King passed away over a year ago. During the inspection of Mr. Horne's farm, Complainant's Inspector identified a container of Asana, an RUP, which Mr. Horne indicated had been purchased while Mr. King was still alive. Invoices obtained from Scholar Farm Supply indicate that Mr. Horne purchased 22.5 gallons of Bicep II Magnum on April 21, 2014, which was after Mr. King's death. Mr. Horne stated that he had purchased the Bicep II Magnum and applied it on his cornfield, but that he was not aware that the Bicep II Magnum product was an RUP.

6. Upon further investigation of the 2014 RUP sales invoices, Complainant's Inspector identified seven people that were unlicensed or uncertified which made illegal purchases from Sholar Farm Supply. These purchases are detailed below:

CUSTOMER	INVOICE DATE	INVOICE NO.	PRODUCT	REG. NO.	QUANTITY
Brent Horne	04/21/2014	70002066	Bicep II Magnum	100-817	22.5 gal.
Thomas Bryan	04/22/2014	70002070	Bicep II Magnum	100-817	15 gal.
G.E. Cavanaugh	05/16/2014	70002139	Bicep II Magnum	100-817	37.5 gal.
G.E. Cavanaugh	05/16/2014	70002140	Bicep II Magnum	100-817	30 gal.
G.E. Cavanaugh	06/23/2014	70002410	Atrazone 4L	66222-549	5 gal.
G.E. Cavanaugh	06/26/2014	70002462	Atrazine 4L	66222-549	15 gal.
			Gramoxone SL	100-1431	2.5 gal.
G.E. Cavanaugh	08/25/2014	70002702	Gramoxone SL	100-1431	2.5 gal.
Trent Talbert	05/16/2014	70002147	Atrazine 4L	66222-549	5 gal.
C.E. Pierce	05/28/2014	70002218	Atrazine 4L	66222-549	15 gal.
			Gramoxone SL	100-1431	2.5 gal.
C.E. Pierce	06/05/2014	70002303	Atrazine 4L	66222-549	2.5 gal.
Jamie Craft	06/05/2014	70002304	Atrazine 4L	66222-549	10 gal.
Jamie Craft	06/12/2004	70002352	Atrazine 4L	66222-549	5 gal.
Ray Rodgers	06/25/2014	70002441	Bicep II Magnum	100-817	7.5 gal.

7. A list of RUPs involved in these sales to unlicensed and uncertified customers are detailed below:

Bicep II Magnum, EPA Reg. No. 100-817, a bipyridylum, contact, non-selective herbicide, Class III, Caution.

Gramoxone SL 2.0 Herbicide (paraquat), EPA Reg. No. 100-1431, a bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison.



Atrazine 4L (atrazine), EPA Reg No. 66222-549, a bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison.

8. The label statements for the RUPs listed above read:

*Gramoxone SL 2.0 Herbicide*

“RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ...”

*Atrazine 4L Herbicide*

“RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ...”

*Bicep II Magnum Herbicide*

“RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ... **STORAGE AND DISPOSAL Container Handling [equal to or less than 5 gallons]** Non-refillable container. ... Triple rinse container (or equivalent) promptly after emptying. ... Then offer for recycling if available or puncture and dispose of in a sanitary landfill ...”

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-451(a) (3) and (13)---

“The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.”

02 NCAC 09L .1302 ---

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

02 NCAC 09L .1305

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (3) name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;
- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card;

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(b)---

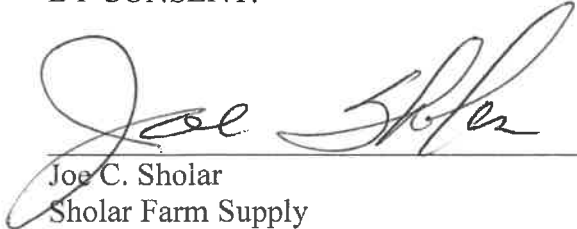
“A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.”

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

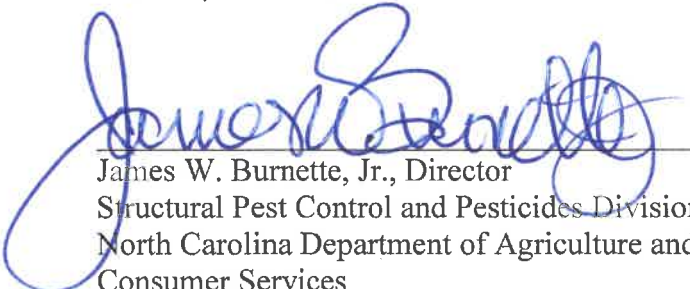
- (a) That Respondent agrees to pay the sum of Two Thousand Two Hundred Dollars (\$2,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Two Thousand Two Hundred Dollars (\$2,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Two Thousand Two Hundred Dollars (\$2,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

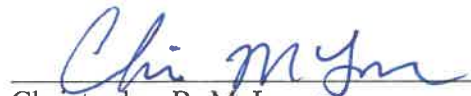
BY CONSENT:

  
Joe C. Sholar  
Sholar Farm Supply  
1440 Deep Bottom Road  
Wallace, North Carolina 28446

4-7-16  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

4/17/2016  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

4/11/2016  
Date

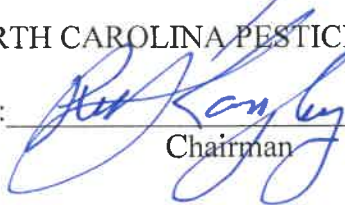
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APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Joe C. Sholar,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Joe C. Sholar, Respondent

Patrick N. Farquhar, Eastern Field Manager

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-002D

Respondent.

# SETTLEMENT AGREEMENT

4. Respondent also confirmed that his private applicator certification (No. 038-59629) expired on December 31, 2000.

5. A list of RUPs involved in the purchase and application by Respondent, an unlicensed and uncertified applicator at the time, is detailed below:

Bicep II Magnum, EPA Reg. No. 100-817, a bipyridylum, contact, non-selective herbicide, Class III, Caution.

Gramoxone SL 2.0 Herbicide (paraquat), EPA Reg. No. 100-1431, a bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison.

Atrazine 4L (atrazine), EPA Reg No. 66222-549, a bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison.

6. The label statements for the RUPs listed above read:

*Gramoxone SL 2.0 Herbicide*

“RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ...”

*Atrazine 4L Herbicide*

“RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ...”

*Bicep II Magnum Herbicide*

“RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ... **STORAGE AND DISPOSAL Container Handling [equal to or less than 5 gallons]** Non-refillable container. ... Triple rinse container (or equivalent) promptly after emptying. ... Then offer for recycling if available or puncture and dispose of in a sanitary landfill ...”

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S §143-440(b)---

“The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .”

N.C.G.S. §143-443(b)(3)---

“It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.”

N.C.G.S. §143-456(a) (2) and (5) ---

“The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.”

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(d)---


“Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) and only for willful violations.”

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Five Hundred Dollars (\$500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board’s approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Five Hundred Dollars (\$500.00) within thirty (30) days of the Board’s approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Five Hundred Dollars (\$500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.

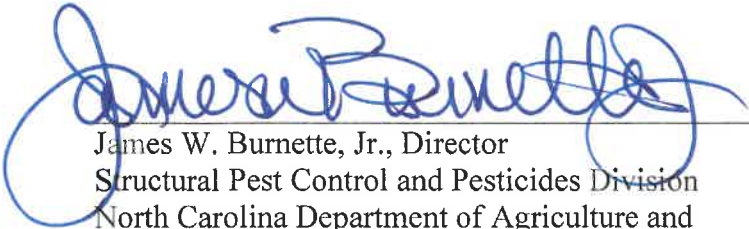
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Glenwood E. Cavanaugh  
Locklin Farms  
Post Office Box 665  
Wallace, North Carolina 28446

03/14/2016  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

3/22/2016  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

3/17/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman





NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,  
**Complainant,**

v.

Glenwood E. Cavanaugh,  
**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Glenwood E. Cavanaugh, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-002E

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
THOMAS RAY ROGERS, )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Thomas Ray Rogers, Respondent.

1. At all times pertinent to this matter, Respondent did not possess a valid pesticide license or certification and resided at 300 Hewitt Road, Richlands, North Carolina.
2. On March 9, 2015, the North Carolina Pesticide Section conducted a restricted use pesticide (RUP) Sales Records Inspection of the Sholar Farm Supply in Wallace, North Carolina following information provided through an anonymous complaint called into the pesticide office on March 6, 2015.
3. On March 10, 2015, following the inspection of the 2014 RUP sales records of Sholar Farm Supply, Complainant's Inspector met with Respondent at his farm located at 300 Hewitt Road in Richlands, North Carolina. Complainant's Inspector informed Respondent that he discovered a RUP purchase of 7.5 gallons of Bicep II Magnum by Respondent from Sholar Farm Supply on June 25, 2014. Respondent confirmed the purchase and admitted that he had applied the pesticide to his cornfields.
4. Respondent also confirmed that his private applicator certification (No. 038-28053) expired on December 31, 1990.

5. The RUP involved in the purchase and application by Respondent, an unlicensed and uncertified applicator, is detailed below:

Bicep II Magnum, EPA Reg. No. 100-817, a bipyridylum, contact, non-selective herbicide, Class III, Caution.

6. The label statement for the RUP listed above reads:

*Bicep II Magnum Herbicide*

“RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ...

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S §143-440(b)---

“The Board may . . . require the certification and recertification of private applicators, . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . .”

N.C.G.S. §143-443(b)(3)---

“It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.”

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(d)---

“Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) and only for willful violations.”

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of Two Hundred Dollars (\$200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board’s approval of this Agreement;

(b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Two Hundred Dollars (\$200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Two Hundred Dollars (\$200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Thomas Ray Rogers

Thomas Ray Rogers  
300 Hewitt Road  
Richlands, North Carolina 28574

2-12-2016  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services

1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

2/18/2016  
Date

Chris McLennan

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

2-17-2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May

NORTH CAROLINA PESTICIDE BOARD

BY: Pat Langley

Chairman



IR2015-002E  
RSA

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Thomas Ray Rogers,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Thomas Ray Rogers, Respondent  
Patrick N. Farquhar, Eastern Field Manager

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-002F

Respondent.

IR2015-002F  
RSA

5. The RUP involved in the purchases and applications by Respondent, an unlicensed and uncertified applicator at the time, is detailed below:

Atrazine 4L (atrazine), EPA Reg No. 66222-549, a bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison.

6. The label statement for the RUP listed above reads:

*Atrazine 4L Herbicide*

“RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ...”

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S §143-440(b)---

“The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .”

N.C.G.S. §143-443(b)(3)---

“It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.”

N.C.G.S. §143-456(a) (2) and (5) ---

“The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.”

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(d)---

“Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) and only for willful violations.”



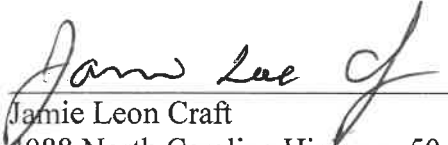
9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Five Hundred Dollars (\$500.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Five Hundred Dollars (\$500.00) in five (5) payments of One Hundred Dollars (\$100.00) each. Respondent's first payment of One Hundred Dollars (\$100.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining four (4) installment payments, in the amount of One Hundred Dollars (\$100.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Five Hundred Dollars (\$500.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469.
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent further acknowledges and agrees that Respondent has signed a Statement Authorizing Confession of Judgment, and that, if Respondent fails to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Five Hundred Dollars (\$500.00) per the payment installment plan outlined in 9(a), this Agreement will constitute a civil penalty assessment of the Board of Five Hundred Dollars (\$500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(d) and waives said right by consenting to the terms of this Agreement.

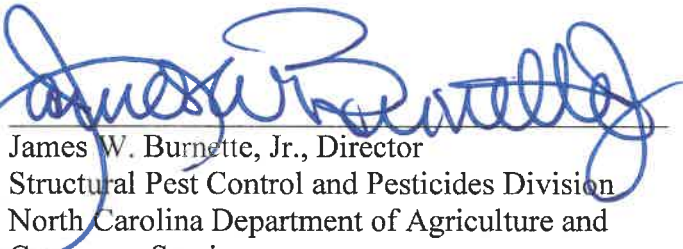
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Jamie Leon Craft  
4088 North Carolina Highway 50  
Maple Hill, North Carolina 28454

4-8-16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

4/19/2016  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

4/18/2016  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Jamie Leon Craft,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Jamie Leon Craft, Respondent

Patrick N. Farquhar, Eastern Field Manager

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-10

Respondent.

## SETTLEMENT AGREEMENT

5. From the onset of Inspector Ward's investigation, Mr. Hrupsa indicated he was not denying responsibility for the damage to the wheat field. Mr. Hrupsa confirmed that Roundup Power Max II, EPA Reg. No. 524-549 was the pesticide used during the April 4, 2015 application.

6. During the investigation, Complainant's Inspector met with Respondent and Respondent verified that it took him three days to complete the aerial application to Mr. Harris' farm. Respondent stated that the first day of application, April 4, 2015, was the day he sprayed by the Tidewater Research Station and that he left a pass off by the Research Station block where the damaged wheat was located. He also indicated that he flew three clean up passes by the Research Station block.

7. In consideration of these details, Respondent admitted that he feels the aerial application performed on April 4, 2015 resulted in the damage to the wheat field.

8. Complainant's Inspector also contacted Dr. Paul Murphey. The damaged wheat was Dr. Murphey's research wheat. Dr. Murphey stated that, in his opinion, the herbicide damage to his wheat field was a result of the airplane turning for a pass and the pesticide coming through the tree line onto the wheat field.

9. On May 6, 2015, Complainant's Inspector called Dr. Wesley Everman for an opinion as to the causation of the damaged wheat field and he concluded that it was glyphosate drift. In addition, Dr. Everman identified a pattern of pesticide spray from the gaps in the tree line onto the wheat.

10. Based on the findings of his investigation, Complainant's Inspector took photographs and collected vegetation and soil samples around the affected wheat field and the following lab results were reported:

#### **Lab Results**

<b>Sample #</b>	<b>Location</b>	<b>Glyphosate</b>	<b>AMPA</b>
PW-01	Vegetation, non-target wheat	1.06 ppm	ND
PW-02	Soil, non-target wheat	0.35 ppm	BQL<0.250 ppm
PW-03	Vegetation, non-target wheat (test plot)	0.76 ppm	ND
PW-04	Soil, non-target wheat (test plot)	0.41 ppm	BQL<0.250 ppm
PW-05	Vegetation, non-target along wire fence	2.00 ppm	2.55 ppm
PW-06	Soil, non-target along wire fence	0.48 ppm	1.08 ppm
PW-07	Vegetation, B Canal Rd south R-O-W	18.1 ppm	2.32 ppm
PW-08	Soil, B Canal Rd south R-O-W	0.64 ppm	0.47 ppm

11. The lab results confirmed the following pesticides were involved in the aerial application:

Roundup Power Max II Herbicide (glyphosate), EPA Reg. No. 524-537, a defoliant/desiccant/herbicide, Class III, Caution.

12. The registered label for the pesticide used during the aerial application contains the following language:

*Roundup Powermax II Herbicide:*

“AVOID CONTACT OF THIS HERBICIDE WITH FOLIAGE, GREEN STEMS, EXPOSED NON-WOODY ROOTS OR FRUIT OF CROPS ..., DESIRABLE PLANTS AND TREES, AS SEVERE INJURY OR DESTRUCTION COULD RESULT. ...

**Aerial Application Equipment** ... Do not allow the herbicide solution to mist, drip, drift, or splash onto desirable vegetation, as minute quantities of this herbicide can cause severe damage or destruction to the crop, plants or other areas on which application was not intended. ...

**Sensitive Areas** Apply this product only when the potential for drift to adjacent sensitive areas (e.g. ... non-target crops) is minimal (e.g., wind is blowing away from the sensitive areas).”

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1005(f)

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Nine Hundred Dollars (\$900.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Nine Hundred Dollars (\$900.00) in six (6) payments of One Hundred Fifty Dollars (\$150.00) each. Respondent's first payment of One Hundred Fifty Dollars (\$150.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining five (5) installment payments, in the amount of One Hundred Fifty Dollars (\$150.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay nine hundred dollars (\$900.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469.
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent further acknowledges and agrees that Respondent has signed a Statement Authorizing Confession of Judgment in the amount of Nine Hundred Dollars (\$900.00), less any payments received, plus costs and interest at the State's legal rate, and that, if Respondent fails to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any

amount under this section shall not relieve any party from any other penalty permitted by law;

- (e) That Respondent agrees that if he fails to pay the total agreed upon sum of Nine Hundred Dollars (\$900.00) per the payment installment plan outlined in 15(a), this Agreement will constitute a civil penalty assessment of the Board of Nine Hundred Dollars (\$900.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(e) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(e) of this Agreement.



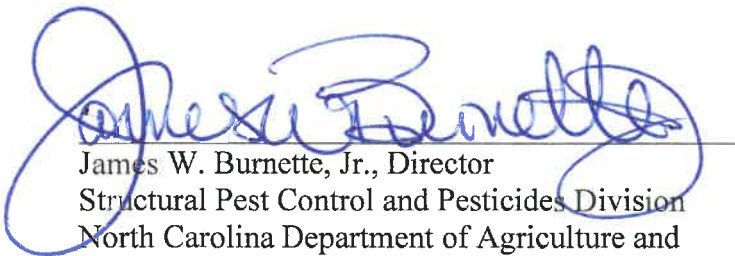
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



James L. Tucker  
Atlantic Ag Aviation  
4896 North Carolina Highway 41 West  
Trenton, North Carolina 28585

13 Apr 2016  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

13 April 2016  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

4/19/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

James L. Tucker,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

James L. Tucker, Respondent

Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
\_\_ CVS \_\_

**NORTH CAROLINA DEPARTMENT  
OF AGRICULTURE AND  
CONSUMER SERVICES,  
STRUCTURAL PEST CONTROL  
AND PESTICIDES DIVISION,**

**Plaintiff,**

**v.**

**JAMES L. TUCKER,**

**Defendant.**

**STATEMENT AUTHORIZING  
CONFESSION OF JUDGMENT**

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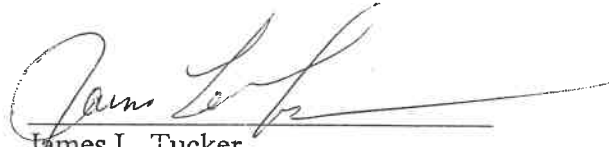
Defendant, pursuant to Rule 68.1 of the North Carolina Rules of Civil Procedure, hereby authorizes the entry of judgment against him in the amount of One Thousand Dollars (\$1,000.00), less any payments received, plus costs and interest at the State's legal rate, from the date of entry of this judgment, and in support thereof shows unto the Court the following:

1. Plaintiff is the North Carolina Department of Agriculture and Consumer Services, Structural Pest Control and Pesticides Division, which is an agency of the State of North Carolina organized pursuant to Chapter 106 of North Carolina General Statutes.
2. In coordination with the North Carolina Pesticide Board, Plaintiff is tasked by law with enforcing the North Carolina Pesticide Law of 1971, N.C.G.S. § 143-434 *et seq.*
3. Defendant, James L. Tucker, is an individual that is or was involved in aerial pesticide applications in North Carolina.
4. The undersigned Defendant is liable to the Plaintiff named above in the amount of Nine Hundred Dollars (\$900.00).
5. The undersigned Defendant authorizes the entry of judgment in favor of Plaintiff in the amount of Nine Hundred Dollars (\$900.00), less any payments received, plus costs and interest at the State's legal rate, from the date of entry of this judgment, until paid in full.

6. Defendant denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his acknowledgement and consent to this Statement Authorizing Confession of Judgment shall not be constituted as an admission of guilt of any violation of North Carolina Pesticide Law or Regulation.

This the 13 day of April, 2016.

By:

A handwritten signature in cursive script, appearing to read "James L. Tucker", written over a horizontal line.

James L. Tucker  
Defendant

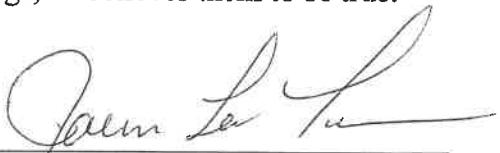
STATE OF NORTH CAROLINA

VERIFICATION

COUNTY OF WAKE

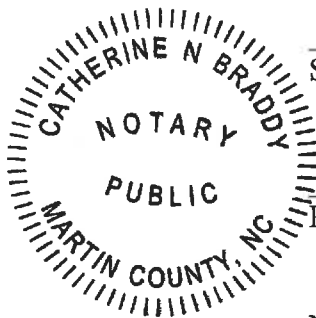
James L. Tucker, being first duly sworn, deposes and says:

He has read the foregoing Statement Authorizing Confession of Judgment and the statements contained therein are true of his own knowledge, except for those matters and things stated therein upon information and belief, and as to those things, he believes them to be true.

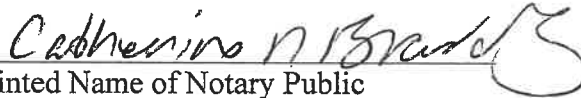
  
James L. Tucker

Subscribed and sworn to before me this day by James L. Tucker.

This the 14 day of April, 2016.



  
Signature of Notary Public

  
Printed Name of Notary Public

My commission expires: 09-21-2019

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-11

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

LEON SCOTT WILKINSON, Individually  
and d/b/a L.P. LANDSCAPING AND  
MAINTENANCE,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Leon Scott Wilkinson (individually and d/b/a L.P. Landscaping and Maintenance), Respondent.

1. At all times pertinent hereto, Respondent was the owner and operator of L.P. Landscaping and Maintenance, 4338 Worthington Lane, Kitty Hawk, North Carolina.
2. On April 23, 2015, Complainant's Inspector Chris Hassell received a complaint that Respondent was applying pesticides in the Bermuda Bay Subdivision in Kill Devil Hills, North Carolina without a valid pesticide license.
3. In reviewing the database of licensee maintained by Complainant, Complainant's Inspector confirmed that Respondent's certified applicator license (No. 026-30335) had expired in 2007.
4. On April 24, 2015, Complainant's Inspector inspected the property mentioned in the complaint, the Bermuda Bay Subdivision. In viewing the property, it appeared to Complainant's Inspector that a pesticide had been applied to Lots 1300, 1302 and 1304 on Devonshire Place and Lots 19 and 22 on Baileys Bay Circle.

5. Complainant's Inspector contacted both town and county officials and confirmed that neither had performed any pesticide applications in that subdivision. Complainant's Inspector also contacted Mr. Scott Midgette of Outer Banks Realty and Construction who confirmed that Respondent was responsible for maintaining the lots in question.

6. On May 6, 2015, Complainant's Inspector interviewed Respondent regarding the pesticide applications to the lots in Bermuda Bay Subdivision. During this interview, Respondent confirmed that he sprayed the lots with a premixed generic glyphosate product that he purchased from Lowes Home Improvement. Respondent could not recall the name of the product he applied and no longer had any of the product in his possession.

7. Respondent admitted to Complainant's Inspector that he was licensed in the past, but that he had allowed his license to expire. Respondent also admitted that he did not have any employees with L.P. Landscaping and Maintenance licensed during the time that the applications were made to the Bermuda Bay Subdivision.

8. Following Complainant's inspection, Respondent renewed his license and currently maintains commercial applicator license No. 026-20335.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S § 143-452(a)

"No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board."

02 NCAC 09L .0503 (a)

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations. The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

N.C.G.S. §143-456(a) (5) and (15) –

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

(15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.



WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

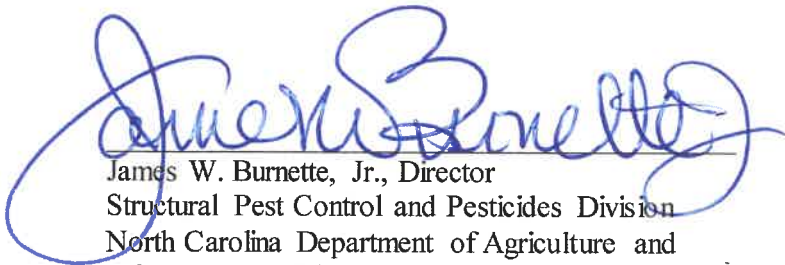
BY CONSENT:



Leon S. Wilkinson  
(Individually and d/b/a L.P. Landscaping  
and Maintenance)  
L.P. Landscaping and Maintenance  
4338 Worthington Lane  
Kitty Hawk, North Carolina 27949

4-6-16

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

4/17/2016

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

4/11/2016

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:



Chairman



IR2015-011

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Leon Scott Wilkinson,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Leon Scott Wilkinson, Respondent

Patrick N. Farquhar, Eastern Field Manager

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April 7, 2016

Christopher R. McLennan  
N.C. Department of Justice  
Attorney General's Office  
PO Box 629  
Raleigh, NC 27602

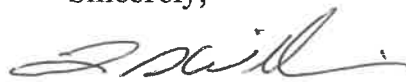
Re: Leon Scott Wilkinson  
dba LP Landscaping

Dear Mr. McLennan:

As we discussed, enclosed is the signed Settlement Agreement and a check for the fine of \$800.00 regarding file No. IR2015-11.

Thank you for the opportunity to settle this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Scott Wilkinson', with a stylized flourish at the end.

Leon Scott Wilkinson

Enc.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-16

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JAMES W. COCKRELL,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and James W. Cockrell, Respondent.

1. At all times pertinent to this matter, Respondent was a pilot for Air Assault Agricultural Aviation based out of Jonesville, North Carolina, and held Aerial Applicator (Pilot) License No. 027-844 and Aerial Applicator (Contractor) License No. 028-734.
2. On or about May 7, 2015, Complainant's Inspectors Travis Snodgrass and Dwight Seal investigated a complaint by Lance Dagerhardt of 1617 Prison Camp Road, Newton, North Carolina. Mr. Dagerhardt reported pesticide exposure to himself and his family as a result of an aerial application to an adjacent wheat field owned by Mr. Lucas Richard of LFR Farms & Greenhouses in Newton, North Carolina.
3. During the investigation, Complainant's Inspectors Snodgrass and Seal interviewed Mr. Richard who confirmed that Respondent, a pilot for Air Assault Agricultural Aviation, performed the aerial application on May 4, 2015 and that the pesticide applied by Respondent was Prosaro Fungicide, EPA Reg. No. 264-862.
4. During Mr. Richard's interview, Respondent flew in and landed at the LFR Farms & Greenhouses facility. Complainant's Inspectors verified that Respondent's helicopter had been inspected recently and that Prosara was the pesticide applied during the application in question. Respondent also stated that he did not intentionally spray anyone and that he left the required buffer zones for all adjacent properties.

5. Complainant's Inspectors attempted to interview the two adjacent property owners to determine if any pesticide damage was sustained to any additional properties or persons. One business was a casket/vault company with a single employee. Although there was no one present at the facility to interview, Complainant's Inspectors noted that the timecard located next to a time clock at the entrance of the building indicated that no one was working on May 4, 2015 at the time of the application.

6. The second property was a home-based daycare located on the other side of the target wheat field, which is owned by Ms. Debbie Metz. Ms. Metz reported that she witnessed the helicopter perform the pesticide application at approximately 3:30 p.m. on Monday, May 4, 2015, but did not notice any spray from the helicopter blowing near her property or the children under her care at the time.

7. Based on the findings of the investigation, photographs were taken and the following vegetation and soil samples were collected around the affected wheat field:

TS-01 A non-target vegetation sample consisting of approximately 1 pound of grass taken from the area where Mr. Dagerhardt said he was working on his vehicle and exposed to the spray. The sample site was located 56 feet from complainant's residence & 96½ feet from the wheat field. GPS Coordinates 35 degrees 37 minutes 20 seconds North 81 degrees 11 minutes 54 seconds West.

TS-02 A control swab sample consisting of 10 swabs.

TS-03 A non-target swab sample consisting of 10 swabs taken from the far left window on the mobile home. The sample site was located 89½ feet from wheat. The sample was taken from the outside of the glass window on the side facing the wheat field.

TS-04 A non-target vegetation sample consisting of approximately 1 pound of grass taken from the front yard of the mobile home. Mr. Dagerhardt said his children were playing in this area when the helicopter was spraying. The sample site was located 7 feet from the mobile home and 60½ feet from wheat field. GPS Coordinates 35 degrees 37 minutes 16 seconds North 81 degrees 11 minutes 58 seconds West.

TS-05 A non-target vegetation sample consisting of approximately 2 pounds of wheat taken from the northwest corner of the field. The sample site was located 265 feet from Metz Tutor Care and 22 feet from the edge of Prison Camp Road, GPS Coordinates 35 degrees 37 minutes 20 seconds North 81 degrees 12 minutes 1 second West.

TS-06 A target vegetation sample consisting of approximately 2 pounds of wheat taken from the northwest side of the field. The sample site was located 75 feet southeast of an electric pole and 122½ feet from Prison Camp Road, GPS Coordinates 35 degrees 37 minutes 21 seconds North 81 degrees 11 minutes 59 second West.

8. The following lab results were reported from the samples taken by Complainant's Inspectors:

Sample No	Type	Location	Tebuconazole	Prothioconazole
TS-01	Veg	Dagerhardt lawn	0.098ppm	0.078ppm
TS-02	Swab	Control	ND	ND
TS-03	Swab	Dagerhardt Trailer	0.621ug	0.833ug
TS-04	Veg	Dagerhardt lawn	0.395ppm	0.298ppm
TS-05	Veg	Wheat 24' from road	ND	ND
TS-06	veg	Target Wheat	2.35ppm	1.65ppm

9. The lab results confirmed the following pesticide was involved in the aerial application:

Prosaro Fungicide, Prothioconazole 19.0% & Tebuconazole 19%;  
EPA Reg. No. 264-862 Caution.

10. The registered label for Prosaro, the pesticide used during the aerial application, contains the following language:

"Do not apply this product in a way that will contact workers or other persons either directly or through drift."

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)---

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 9L .1005(e) and (f)

(e) No pesticide shall be deposited within 100 feet of any residence.

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of One Thousand Four Hundred Dollars (\$1,400.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay One Thousand Four Hundred Dollars (\$1,400.00) in one (1) payment of Four Hundred Sixty-Six Dollars and Sixty-Six Cents (\$466.66), and two (2) payments of Four Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$466.67). Respondent's first payment of Four Hundred Sixty-Six Dollars and Sixty-Six Cents (\$466.66) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining two (2) installment payments, in the amount of Four Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$466.67) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay One Thousand Four Hundred Dollars (\$1,400.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469.

(b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

(c) That Respondent further acknowledges and agrees that Respondent has signed a Statement Authorizing Confession of Judgment in the amount of One Thousand Four Hundred Dollars (\$1,400.00), less any payments received, plus costs and interest at the State's legal rate, and that, if Respondent fails to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County

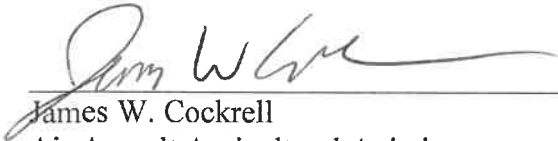
Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;

- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Four Hundred Dollars (\$1,400.00) per the payment installment plan outlined in 13(a), this Agreement will constitute a civil penalty assessment of the Board of One Thousand Four Hundred Dollars (\$1,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(d) of this Agreement.



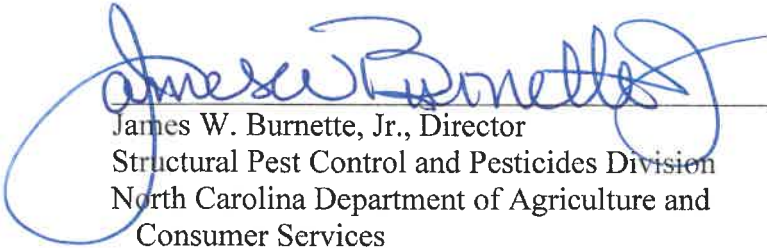
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

  
James W. Cockrell

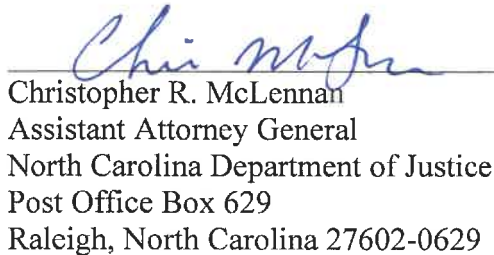
Air Assault Agricultural Aviation  
3133 Swan Creek Road  
Jonesville, North Carolina 28642

3/15/16  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services

1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

3/23/2016  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

3/21/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



2015-16

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

James W. Cockrell

**Respondent,**

Supplemental Information

Settlement conference was held with James W. Cockrell  
Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-17

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

MATTHEW OTTAVIO, Individually, and )  
d/b/a CAROLINA LANDSCAPING AND )  
TRACTOR SERVICE, )

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Matthew Ottavio (individually and d/b/a Carolina Landscaping and Tractor Service), Respondent.

1. At all times pertinent to this matter, Respondent was the owner and operator of Carolina Landscaping and Tractor Service, 4012 Midgett Road, Kitty Hawk, North Carolina. At no time was Respondent licensed as a commercial pesticide applicator.
2. On April 29, 2015, Complainant's Inspector Chris Hassell received a complaint that a landscaping crew working for Respondent was applying pesticides at the Sea Pointe Condo site in Kill Devil Hills, North Carolina, and that no one on the crew possessed a commercial pesticide applicator license.
3. Based on this allegation, Complainant's Inspector contacted Mr. Myers Fuller of Village Realty who confirmed that Respondent was contracted to perform all of the landscape maintenance for Sea Pointe Condo, including all mowing and spraying. No other company, including Village Realty, made pesticide applications to this site.
4. On April 29, 2015, Complainant's Inspector inspected the property in question and it appeared that herbicide had been applied to the flowerbeds and around the fence and buildings.

5. During his inspection, Complainant's Inspector noted that the site in question was located near public utilities and Highway 12. Therefore, Complainant's Inspector contacted the Dare County Water Department, North Carolina Department of Transportation, Dare County Turf Maintenance, and the Town of Nags Head to determine if any pesticide applications had been performed at or near the site in question. All departments questioned denied any recent applications in the area.

6. On May 6, 2015, Complainant's Inspector interviewed Respondent by phone, at which time Respondent denied making any pesticide applications to the site in question and confirmed that neither he nor his employees were licensed pesticide applicators.

7. On May 8, 2015, Complainant's Inspector took photographs and collected vegetation and soil samples from the Sea Pointe Condo site. The pesticide identified in the samples was an unknown glyphosate product and the lab results are detailed below:

<u>Lab Results:</u>		<u>Glyphosate</u>	<u>AMPA</u>
CH-18	Soil from Sea Pointe property	13.3 ppm	2.07 ppm
CH-19	Soil from Sea Pointe property	17.4 ppm	2.11 ppm

8. On May 20, 2015, Complainant's Inspector showed Respondent photographs provided by the complainant. The photographs depicted workers wearing shirts with Respondent's company logo on them while performing pesticide applications to the site in question. Inspector Hassell also showed photographs of the Sea Point Condo site, which depict work trucks marked with Respondent's company decals.

9. When questioned about the identity of the workers and the work trucks depicted in the photographs, Respondent stated that it was a very competitive business and someone must have staged the site to look like it was his crew performing the pesticide application to the Sea Point Condo site.

10. Upon further questioning, Respondent acknowledged that it was possible one of his landscape employees may have applied the pesticide to the site in question in order to make the maintenance process easier, although no one on his crew admitted that to him. Respondent also conceded that he had been investigated before and was aware that he was prohibited from making commercial pesticide applications without a license.

11. As of December 20, 2015, no one associated with Carolina Landscaping and Tractor Service, including Respondent, had obtained a commercial pesticide applicator license.

12. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S § 143-452(a)

"No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board."

02 NCAC 09L .0503 (a)

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations. The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

N.C.G.S. §143-456(a) (4), (5) and (15) –

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 14(c) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

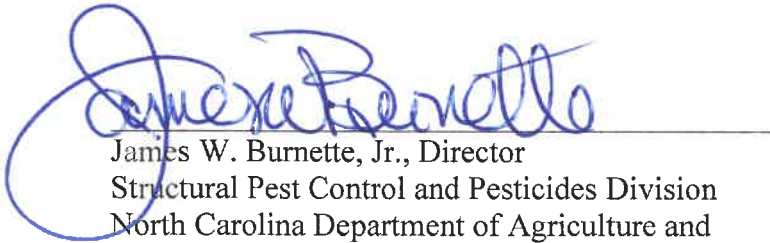
BY CONSENT:



Matthew Ottavio  
(Individually and d/b/a Carolina Landscaping  
and Tractor Service)  
Carolina Landscaping and Tractor Service  
4012 Midgett Road  
Kitty Hawk, North Carolina 27949

3/28/16

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

4/11/2016

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

4/11/2016

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman

IR2015-017

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Matthew Ottavio,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.





5. During the investigation, Complainant's Inspector contacted Dr. Henry Wade for an evaluation of the damage to Ms. Hearne's vegetation as a result of the herbicide application. Based upon the analysis of the photographs provided by Complainant's Inspector of the affected vegetation, Dr. Wade stated:

*"To a reasonable degree of scientific certainty, the damage to desirable trees and vegetation on Ms. Ray Hearn's property was caused by triclopyr that was applied on April 27, 2105 by employees of American Conservation Experience."*

6. Based on the information gathered during the investigation, Complainant's Inspector contacted Respondent to discuss the circumstances surrounding the pesticide application on April 27, 2015. During this interview, Respondent admitted that the application he performed caused damage to Ms. Hearne's vegetation and that he was in contact with Ms. Hearne to make arrangements for reparation.

7. Complainant's Inspector found the following pesticides involved

ALLIGARE TRICLOPYR 4, EPA Reg. No. 81927-11

8. The Alligare Triclopyr 4 label states the following:

*Do not apply Alligare Triclopyr 4 to exposed roots or shallow rooted trees.*

*Do not make direct applications or allow drift mist to drift onto cotton, fruit or orchard trees, shrubs, grapes, peanuts, soybeans, tobacco, vegetable crops, flowers, citrus, or other desirable broadleaf plants.*

9. Based on the results of our investigation, there is reason to believe that your acts and /or omissions violated the following provisions of the North Carolina Pesticide law and /or Regulations:

N.C.G.S. §143-443 (b)(3) ----

(b) It shall be unlawful:

(3) "For any person to use any pesticide in a manner inconsistent with its labeling."

N.C.G.S. §143-456(a) (2), (4), (5)

(a) "The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(4) Operated in a faulty, careless, or negligent manner;

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.”

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

10. Each of the above violations of the North Carolina Pesticide Law and/or regulations is subject to a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-469(b)---


A civil penalty of not more than Two-thousand Dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

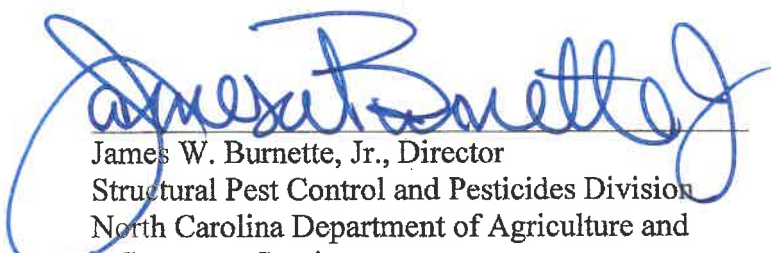
- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board’s approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board’s approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

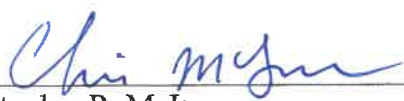
BY CONSENT:

  
Joshua Burt  
American Conservation Experience  
127 Fletcher Commercial Drive  
Fletcher, North Carolina 28732

4-13-16  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

4/19/2016  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

4/18/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



2015-19

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Joshua Burt

**Respondent,**

Supplemental Information

Settlement conference was held with Joshua Burt's attorney (American Conservation Experience). Respondent agreed to settlement to pay civil penalty with discussion.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-42A

## SETTLEMENT AGREEMENT

4. On July 9, 2015, Complainant's Inspector met with Mr. Guimares who confirmed that he no longer worked for Respondent and had not worked for him for several years. Mr. Guimares reported that he provided his license to Southern Agricultural Insecticides, Inc., for their records when processing pesticide purchases through his company D. G. Industries and that Southern Agricultural Insecticides, Inc., must have misfiled his license under Respondent's company, Caulder Land Development.

5. Following the investigation at Southern Agricultural Insecticides, Inc., Complainant's Inspector met with Respondent to discuss the purchase of Drexel Chlorpyrifos 4E-AG Insecticide on May 6, 2015. Respondent admitted that he purchased and applied the pesticide to control yellow jackets on the ditch banks of several developments he owns. Respondent indicated that he was not aware that his purchase was an RUP or that Mr. Guimares was listed on his account as the licensed applicator for purchases from Southern Agricultural Insecticides, Inc.

6. Based on the information provided by Complainant's Inspector, Respondent agreed not to use this pesticide until he secured his applicator's license and made efforts to learn more about the pesticide's restrictions and use.

7. Southern Agricultural Insecticides, Inc.'s sales invoice confirmed that salesperson 401 was responsible for the RUP sale to Respondent. Richard D. Baxter, Pesticide Dealer License No. 037-3685, was the licensed pesticide dealer for that facility at the time of the sale.

8. The sales invoice confirmed the following pesticide was involved in the RUP purchase:

Chlorpyrifos 4E-AG Insecticide, EPA Reg. No. 19713-520, WARNING

9. The registered label for the pesticide purchased contains the following language:

RESTRICTED USE PESTICIDE

"For retail sale to and use only by certified applicators....."

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. 143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

02 NCAC 09L .0503(A)

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.

N.C.G.S. §143-456(a)(2), (5) and (15)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

Failed to pay the original or renewal license fee when due and continued to operate as applicator, or applied pesticides without a license.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Eight Hundred Dollars (\$800.00) in sixteen (16) payments of Fifty Dollars (\$50.00) each. Respondent's first payment of Fifty Dollars (\$50.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining fifteen (15) installment payments, in the amount of Fifty Dollars (\$50.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Eight Hundred Dollars (\$800.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;



- (d) That Respondent further acknowledges and agrees that Respondent has signed a Statement Authorizing Confession of Judgment in the amount of Eight Hundred Dollars (\$800.00), less any payments received, plus costs and interest at the State's legal rate, and that, if Respondent fails to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (e) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) per the payment installment plan outlined in 12(a), this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(e) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(e) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

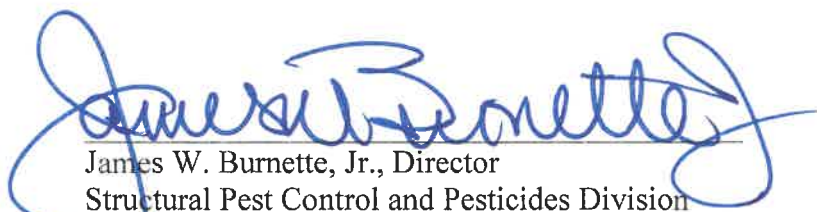
BY CONSENT:



David C. Caulder  
Caulder Land Development  
194 Lake Lure Highway  
Bat Cave, North Carolina 28710

5-3-16

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

5/9/2016

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

5-6-2016

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:



Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

David C. Caulder

**Respondent,**

Supplemental Information

Settlement conference was held with Josh Valentine, attorney for David Caulder.  
Respondent agreed to settlement to pay civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-42B

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

RICHARD D. BAXTER,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Richard D. Baxter, Respondent.

1. At all times pertinent to this matter, Respondent was the licensed dealer for Southern Agricultural Insecticides, Inc., in Hendersonville, North Carolina, and held Pesticide Dealer License No. 037-3685.

2. On June 26, 2015 Complainant's Inspectors, Charlie Jones and Bruce Nicely inspected the Restricted Use Pesticide ("RUP") sales at Southern Agricultural Insecticides, Inc., in Hendersonville, North Carolina. Complainant's Inspector Nicely reviewed the RUP sales invoices for Southern Agricultural Insecticides, Inc., and determined that, on May 6, 2015, an RUP was sold to Mr. David C. Caulder of Caulder Land Development, an unlicensed applicator.

3. During the investigation, Complainant's Inspector determined that the sales invoice generated for the pesticide purchase to Mr. Caulder was processed through the name Mr. Dario Guimares, Pesticide Applicator License No. 26-25689, a former employee of Caulder Land Development.

4. On July 9, 2015, Complainant's Inspector met with Mr. Guimares who confirmed that he no longer worked for Mr. Caulder and had not worked for him for several years. Mr. Guimares reported that he provided his license to Southern Agricultural Insecticides, Inc., for their records when processing pesticide purchases through his company D. G. Industries and that Southern Agricultural Insecticides, Inc., must have misfiled his license under Caulder Land Development.

5. Following the investigation at Southern Agricultural Insecticides, Inc., Complainant's Inspector met with Mr. Caulder to discuss the purchase of Drexel Chlorpyrifos 4E-AG Insecticide on May 6, 2015. Mr. Caulder admitted that he purchased and applied the pesticide to control yellow jackets on the ditch banks of several developments he owns. Mr. Caulder indicated that he was not aware that his purchase was a restricted use pesticide or that Mr. Guimares was listed on his account as the licensed applicator for purchases from Southern Agricultural Insecticides, Inc.

6. Based on the information provided by Complainant's Inspector, Mr. Caulder agreed not to use this pesticide until he secured his applicator's license and made efforts to learn more about the pesticide's restrictions and use.

7. Southern Agricultural Insecticides, Inc.'s sales invoice confirmed that salesperson 401 was responsible for the RUP sale to Mr. Caulder and that Respondent, Pesticide Dealer License No. 037-3685, was the licensed pesticide dealer for that facility at the time of the sale.

8. The sales invoice confirmed the following pesticide was involved in the RUP purchase:

Chlorpyrifos 4E-AG Insecticide, EPA Reg. No. 19713-520, WARNING

9. The registered label for the pesticide purchased contains the following language:

RESTRICTED USE PESTICIDE

"For retail sale to and use only by certified applicators....."

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-451(a)(3), (5) and (13)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 NCAC 09L .1302

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

02 NCAC 09L .1305 (3), (4) and (5)

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;

certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;

certification or license expiration date as shown on the certified or licensed applicator's certification card.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Four Hundred Dollars (\$1,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Four Hundred Dollars (\$1,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Four Hundred Dollars (\$1,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

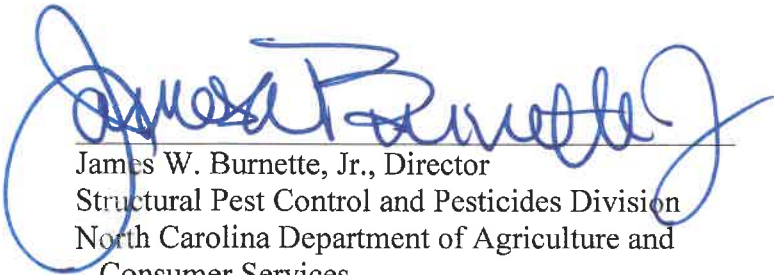
BY CONSENT:

RDB x E

Richard D. Baxter  
Southern Agricultural Insecticides, Inc.  
511 Maple Street  
Hendersonville, North Carolina 28792

4-15-16

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

4/19/2016

Date

Chris McLennan

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

4/18/2016

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of May

NORTH CAROLINA PESTICIDE BOARD

BY:

Chairman





NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Richard Baxter

**Respondent,**

Supplemental Information

Settlement conference was held with Richard Baxter. Respondent agreed to settlement to pay civil penalty with discussion.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File No. IR2014-067

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

IGNACIO CASTRO AND GABRIELA )  
CASTRO (d/b/a DC LAWN MOWING, )  
INC.) )

Respondents. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Ignacio Castro (individually and as President and Registered Agent of DC Lawn Mowing, Inc.) and Gabriela Castro (d/b/a "DC Lawn Mowing, Inc."), collectively "Respondents."

1. At all times pertinent to this matter, Respondent Ignacio Castro, an unlicensed applicator, owned and operated DC Lawn Mowing, Inc., located at 111435 Red Hickory Lane, Charlotte, North Carolina 28273. At all times pertinent to this matter, Respondent Gabriela Castro assisted in those operations.

2. On September 3, 2014, Complainant's Inspector Chris Smith inspected DC Lawn Mowing, Inc., during the performance of a routine lawn service for the Quality Suites in Pineville, North Carolina. At the time of the inspection, Respondent Ignacio Castro was observed making an application to several grassy areas in the parking lot of the Quality Suites using a backpack sprayer.

3. Additionally, Inspector Smith reviewed invoices provided by the manager of the Quality Suites. The invoices revealed that "weed control" was one of the services provided by DC Lawn Mowing, Inc.

4. At the time of the inspection, neither Respondents nor any other individual with DC Lawn Mowing, Inc., were properly licensed to engage in the business of providing commercial pesticide applications. At the time of the inspection, Respondent Ignacio Castro represented that Respondent Gabriela Castro intended to take the examination to obtain a commercial applicator's license in the next few weeks.

5. Samples obtained from DC Lawn Mowing, Inc.'s truck by Inspector Smith during his September 3, 2014 inspection detected dicamba, triclopyr, quinclorac and 2,4-D. These chemicals are all active ingredients found in pesticides.

6. Testing of the samples obtained by Inspector Smith from DC Lawn Mowing, Inc.'s truck revealed the following:

Sample No	Type	Quinoclorac	2,4-D	Dicamba	Triclopyr
CS-84	Tank	220ppm	360ppm	70.0ppm	1.6ppm
CS-85	Tank	ND	0.063ppm	ND	0.15ppm

7. Inspector Smith's investigation further revealed the following pesticides involved:

*Momentum FX2:*

Triisopropanolamine Salt of 2,4-Dichlorophenoxyacetic Acid\* . . . . . 44.20%  
 Triethylamine Salt of 3,5-6-Trichloro-2-Pyridinyloxyacetic Acid\*\* . . . . . 3.86%  
 Methylheptyl Ester of Fluroxypyr:[(4-amino-3-5-dichloro-6-fluoro-2-pyridinyl)oxy]acetic Acid,1-methylheptyl Ester \*\*\* . . . . . 4.20%  
 EPA Reg. No. 228-447-10404

*Momentum Q:*

Dimethylamine Salt of 2,4-Dichlorophenoxyacetic Acid\* . . . . . 13.24%  
 Quinclorac (3,7-Dichloro-8-quinolinecarboxylic Acid)\*\* . . . . . 8.25%  
 Dicamba (3,6-Dichloro-o-Anisic Acid)\*\*\* . . . . . 1.38%  
 EPA Reg. No. 228-531

*Drive XLR8:*

dimethylamine salt of quinclorac:  
 3,7-dichloro-8-quinolinecarboxylic acid 18.92%) . . . . . 1.38%  
 EPA Reg. No. 7969-272

8. In 2010, Respondent Ignacio Castro was warned to obtain a commercial applicator's license, as he was advertising weed control services through his business, DC Lawn Mowing, Inc.

9. Additionally, on December 2, 2011, Respondent Ignacio Castro was issued a Notice of Warning following an inspection of DC Lawn Mowing, Inc., due to the fact that Mr. Castro had failed to obtain a license or discontinue providing pesticide services (IR2011-56).

10. Respondents have had the necessity of, and process for, obtaining a pesticide license explained to them on numerous occasions.

11. Based upon Inspector Smith's investigation, Complainants allege that Respondents (d/b/a DC Lawn Mowing, Inc.), have been engaged in the business of providing pesticide applications/treatments over the course of several years and have yet to acquire the proper pesticide license authorizing them to provide such applications.

12. Additionally, as a result of its investigation, Complainant alleges that Respondents, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-456(a) (2), (5) and (15)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

N.C.G.S §143-452(a)

No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

NCAC 09L .0503 (a)

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations. The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondents agree to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services. Respondents shall pay One Thousand Two Hundred Dollars (\$1,200.00) in three (3) payments of Four Hundred Dollars (\$400.00) each. Respondents' first payment of Four Hundred Dollars (\$400.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondents' remaining two (2) installment payments, in the amount of Four Hundred Dollars (\$400.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondents' payments shall be considered to have been paid on time if Respondents send the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondents' failure to fulfill their agreement to pay One Thousand Two Hundred Dollars (\$1,200.00) as provided herein may subject them to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469; ~~§ 600.10-12-16~~
- (b) That Respondents acknowledge their right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondents further acknowledge and agree that Respondents have signed a Statement Authorizing Confession of Judgment, and that, if Respondents fail to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (d) That Respondents agree that if they fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) per the payment installment plan outlined in 14(a), this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondents acknowledge their right to judicial review of the civil penalty assessment in paragraph 14(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondents further agree that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(d) of this Agreement.

- (iii) Respondents further agree to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondents' failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Gabriela Castro  
GABRIELA CASTRO

10-17-16  
Date

Ignacio Castro  
IGNACIO CASTRO (Individually, and as  
President/Registered Agent of DC Lawn Mowing, Inc.)  
DC LAWN MOWING, INC.  
11435 Red Hickory Lane  
Charlotte, North Carolina 28273

10-17-16  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/20/2016  
Date

Chris McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

10/20/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 8<sup>th</sup> day of November, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

Pat Langley  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,  
**Complainant,**

v.

Gabriela and Ignacio Castro,  
**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Gabriela and Ignacio Castro, Respondent  
Dwight E. Seal, Western Field Manager  
Christopher R. McClennan, Assistant Attorney General  
Sergio Morales-Monroy, Bilingual Specialist



STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-67

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

DANIEL D. TRAUB,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Daniel D. Traub, Respondent.

1. At all times pertinent to this matter, Respondent was the responsible licensee (Commercial Applicator License No. 026-22645) for Tru-Green Chemlawn, 300 Dominion Drive, Suite 300, Morrisville, North Carolina 27560.
2. On September 10, 2015, Complainant's Inspector William B. Dunn received an anonymous call from a concerned citizen regarding a chemical spill at 225 Lake Drive in Wendell, North Carolina. Inspector drove immediately to the location in question. Upon investigation, Complainant's Inspector noted liquid running down the storm drain gutter into the drainage system.
3. During the inspection of the spill, Complainant's Inspector learned that Tru-Green Chemlawn recently made an application in the area. Complainant's Inspector contacted Nick Barrios, the technician for Tru-Green Chemlawn, and questioned him regarding the spill. Mr. Barrios admitted that he had a hose rupture during a pesticide application earlier in the day and the contents leaked into his truck bed. Although Mr. Barrios believed the chemicals were contained in the truck bed, as he pulled away he realized that the contents had began to spill out onto the roadway.

4. Mr. Barrios further admitted that he did not use spill control measures to clean up the spill, although he stated that he put pillows out for containment of the liquid. Complainant's Inspector took photographs of the spill area and these photographs did not reflect any containment measures or clean-up efforts by Mr. Barrios. In fact, Complainant's Inspector noted that the ruptured hose was still in disrepair during his interview with Mr. Barrios. At the time of this spill, the licensed applicator for Tru-Green Chemlawn was Respondent, Daniel D. Traub.

5. Complainant's Inspector determined the following pesticides were involved:

Merit 2F, EPA Reg. No.432-1312, Class III Caution  
Talstar P Bifenthrin, EPA Reg. No. 279-3206, Class III Caution  
Dorado Propaconazole, EPA Reg. No. 100-741, Class II Warning

6. Laboratory analysis of the samples collected by Complainant's Inspector revealed the following:

Sample No.	Type	Location	Pesticide	Quantity
BD-12	Spill	225 Lake View Drive Wendell, NC	Propiconazole	58 ppm
			Bifenthrin	58 ppm
			Imidacloprid	92 ppm
			Cyfluthrin	4.7 ppm
			Myclobutanil	9.6 ppm
			O-Phenylpheno	10.14ppm

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-441(b)

No person shall handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with pesticides, or in any manner contrary to the regulations of the Board.

N.C.G.S. §143-456(a)(2), (3), (4) and (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated faulty or unsafe equipment;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-469(b)

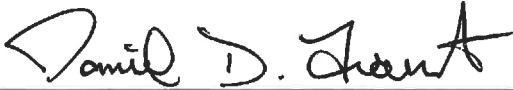
A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

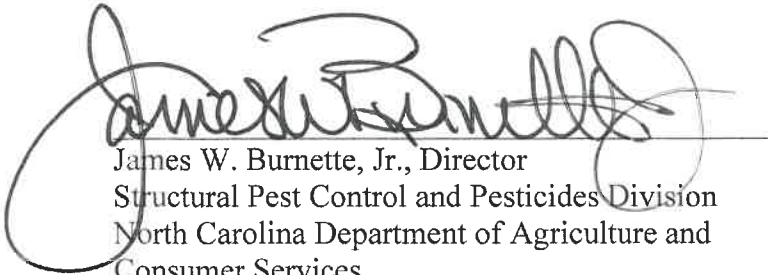
BY CONSENT:



Daniel D. Traub  
Tru-Green Chemlawn  
300 Dominion Drive, Suite 300  
Morrisville, North Carolina 27560

9-19-16

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

9/28/2016

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

9/26/2016

Date

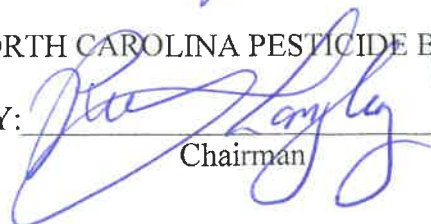
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APPROVED AND ORDERED FILED,

this the 8<sup>th</sup> day of November

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Daniel D. Traub,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Daniel D. Traub, Respondent  
Dwight Seal, Western Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-4

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
 )  
Complainant, )  
 )  
v. )  
 )  
EMILIO A. RANGEL, )  
 )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Emilio A. Rangel, Respondent.

1. At all times pertinent hereto, Respondent was performing commercial pesticide applications without a license and operated his business from his residence at 4427 Tripplett Street in Hudson, North Carolina 28638.
2. On February 26, 2016, Pesticide Inspectors Travis Snodgrass and Eric Ball received a complaint from Timothy Vogler of Vogler Lawncare & Landscaping regarding the pesticide applications of pre-emergent herbicides being performed by an applicator that was not registered with a valid pesticide applicator license.
3. During his investigation, Complainant's Inspectors learned that Respondent recently performed a residential application to Mr. Jimmy Richardson's lawn located in Hickory, North Carolina and an application to a commercial business, Bo's Sports Complex, which is located in Lenoir, North Carolina.
4. Complainant's Inspectors located Respondent onsite during an application and noted that he was applying a granular substance to a residential lawn using a drop spreader. Complainant's Inspectors also inspected Respondent's truck and identified several bags of PRO-MATE BARRICADE 0.375% PLUS FERTILIZER (Prodiamine, EPA Reg. No. 5905-535).

5. During the investigation, Respondent admitted that he had applied the Pro-Mate Barricade to Bo's Sports Complex. Respondent stated that he previously worked for a licensed pesticide applicator for approximately ten years, but had decided to start his own business. Respondent further indicated that he had been operating his business for about two years and believed he could continue to perform pesticide applications under his previous employer's pesticide applicator license.

6. The specific pesticide involved in the applications to the properties in question is detailed below:

PRO-MATE BARRICADE 0.375% PLUS FERTILIZER (Prodiamine, EPA Reg No. 5905-535)

7. Based upon the information provided during the interview with Respondent, Complainant's Inspectors obtained soil samples from the Richardson residence and Bo's Sports Complex to determine the presence of prodiamine. The lab results from the samples taken at the two properties in question are detailed below:

**Sample Results**

Sample No.	Type	Location	Prodiamine
EB-17	Soil	Richardson's lawn	0.23 ppm
EB-18	Soil	Bo's sidewalk	34.0 ppm
EB-19	Soil	Bo's sidewalk	34.0 ppm

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

02 NCAC 09L .0503 (a)

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations. The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

N.C.G.S § 143-452(a)

No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

N.C.G.S. §143-456(a)(2) (4), (5) and (15)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is



necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Emilio A. Rangel  
Emilio A. Rangel  
4427 Tripplett Street  
Hudson, North Carolina 28638

9 - 19 - 16  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

9/28/2016  
Date

Christopher R. McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

10/20/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 8<sup>th</sup> day of November, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY: Rick Stanley

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Emilio A. Rangel,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Emilio A. Rangel, Respondent  
Dwight Seal, Western Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-8

16-83

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
MICHAEL BRUCE GRAY, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Michael Bruce Gray, Respondent.

1. At all times pertinent to this matter, Respondent was the pesticide applicator and responsible licensee (Applicator License No. 038-75627) at his residence: 619 Parkstown Road, LaGrange, North Carolina 28551.
2. On March 18, 2016, Pesticide Inspector Douglas P. Bullard investigated a complaint by Ms. Erica P. Rarick and her husband, Christopher Rarick, who stated that a pesticide application performed at approximately 10:00 a.m. on that same day to the soybean field adjacent to their property drifted onto their bodies and yard.
3. During Complainant's Inspector's interview with the Raricks, they reported no adverse health effects from the mist coming in contact with their bodies and denied the use of any pesticides on their property. Mr. Rarick also confirmed that the application performed on the target soybean field was made by Respondent.
4. Based on these findings, Complainant's Inspector obtained soil/mulch and grass vegetation samples from the Rarick's property and from Respondent's field. Complainant's Inspector did note in his investigation that there was no visible adverse effect on the Raricks' property at the time of the inspection on March 18, 2016.

5. On March 21, 2016, Complainant's Inspector interviewed Respondent regarding the application performed on the field adjacent to Mr. and Mrs. Rarick's property. Respondent confirmed the use of Credit 41 and 2, 4-D Amine 4 as a burndown application performed on March 18, 2016 to the target soybean field.

6. Based on his investigation, Complainant's Inspector determined that the following pesticides were involved:

2, 4-D amine 4 Herbicide (2,4-D), EPA Reg. No. 42750-19, a chlorinated phenoxy herbicide, Class I, Danger.

Credit 41 Extra (glyphosate), EPA Reg. No. 71368-20, a glycine defoliant/desiccant herbicide, Class III, Caution.

7. Complainant's Inspector submitted the samples obtained during the investigation to the lab, which revealed the following results:

	<u>2,4-D</u>	<u>Glyphosate</u>	<u>AMPA</u>
DB-10 Non-target vegetation, Rarick yard	0.099 ppm	ND	ND
DB-11 Non-target soil and mulch, Rarick yard	ND	ND	0.277 ppm
DB-12 Target vegetation, Gray field	33 ppm	56.48 ppm	0.512 ppm
DB-13 Target soil, Gray field	1.3 ppm	1.15 ppm	0.329 ppm

8. The label statements obtained by Complainant's Inspector read as follows:

*2, 4-D amine 4 Herbicide:*

**"DIRECTIONS FOR USE ...SPRAY DRIFT MANAGEMENT ... Wind Speed ...** Only apply this product if the wind direction favors on-target deposition and are not sensitive areas (including, but not limited to, residential areas ...) within 250 feet downwind. **Susceptible Plants ...** Do not apply under circumstances where spray drift may occur to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use, or consumption. ..."

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

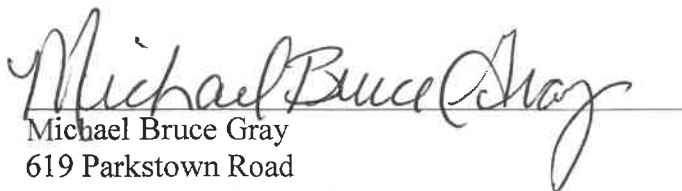
11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Four Hundred Dollars (\$400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (d) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

- (e) That Respondent agrees that if he fails to pay the total agreed upon sum of Four Hundred Dollars (\$400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Four Hundred Dollars (\$400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(e) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(e) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

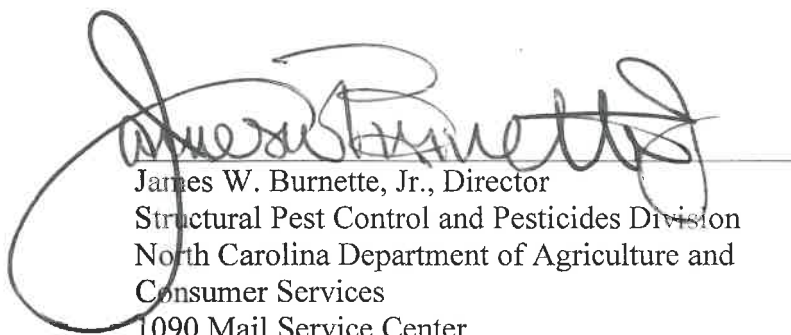
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Michael Bruce Gray  
619 Parkstown Road  
LaGrange, North Carolina 28551

9-23-2016  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

9/28/2016  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

9/26/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 8<sup>th</sup> day of November, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Michael Bruce Gray,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Michael Bruce Gray, Respondent

Patrick N. Farquhar, Eastern Field Manager



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-25

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
DON RAUL, Individually and d/b/a RAUL'S )  
LANDSCAPING, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Don Raul (Individually and d/b/a Raul's Landscaping), Respondent.

1. At all times pertinent hereto, Respondent was the owner and operator of Raul's Landscaping, 86 West Barr Road, Chocowinity, North Carolina 27817.
2. On May 20, 2015, Complainant's Pesticide Inspector John H. Colborne conducted a routine commercial pesticide license inspection of Raul's Landscaping. During this inspection, Complainant's Inspector learned that early that day Raul's Landscaping performed a commercial pesticide application of Glystar Plus Herbicide (glyphosate), EPA Reg. No. 42750-61 on two residential properties in the Cypress Landing Subdivision in Chocowinity, North Carolina.
3. During an interview with Mr. Nikolas C. Renteria, Manager of Raul's Landscaping, Complainant's Inspector confirmed that Mr. Renteria's crew performed pesticide applications to the flower beds at both properties to control broadleaf and annual weeds. Mr. Renteria also verified that no one associated with Raul's Landscaping held a valid commercial pesticide applicator license.
4. During the investigation, Complainant's Inspector took photographs of the Glystar Plus Herbicide container, the back pack sprayer, and Mr. Renteria's company work order which stated for his crew to "spray" the above listed properties. Mr. Renteria also admitted that Raul's Landscaping has been applying pesticides commercially for several years to multiple properties.

5. The specific pesticide involved in the pesticide applications to the two residential properties in Cypress Landing Subdivision in Chocowinity, North Carolina is detailed below:

Glystar Plus Herbicide (glyphosate), EPA Reg. No. 42750-61, a nonselective, post-emergent herbicide, Class III, Caution.

6. Complainant's Inspector noted during his investigation that Respondent had been issued a Notice of Non-Compliance on July 22, 2014 for applying pesticides commercially without a license and that no individual from Raul's Landscaping initiated the license application procedure following that Notice of Non-Compliance.

7. However, effective June 9, 2015, Mr. Renteria obtained his commercial pesticide applicator license (No. 026-33493).

8. Based on the results of our investigation, there is reason to believe that your acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

02 NCAC 09L .0503 (A)

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations. The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

N.C.G.S § 143-452(a)

"No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board."

N.C.G.S. §143-456(a)(5) and (15)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

(15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.


10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Eight Hundred Dollars (\$800.00) in four (4) payments of Two Hundred Dollars (\$200.00) each. Respondent's first payment of Two Hundred Dollars (\$200.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining three (3) installment payments, in the amount of Two Hundred Dollars (\$200.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Eight Hundred Dollars (\$800.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent further acknowledges and agrees that Respondent has signed a Statement Authorizing Confession of Judgment, and that, if Respondent fails to make any payment required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court, and file the Statement Authorizing Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) per the payment installment plan outlined in 10(a), his Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

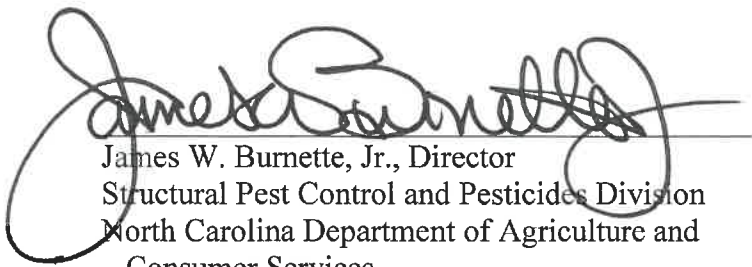
- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(d) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

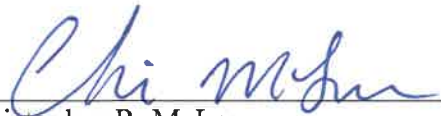
BY CONSENT:

  
\_\_\_\_\_  
Don Raul  
(Individually and d/b/a Raul's Landscaping)  
Raul's Landscaping  
86 West Barr Road  
Chocowinity, North Carolina 27817

7-22-19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

8/17/2016  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

8/12/16  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of September, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Don Raul,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Don Raul, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-45

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
STEPHEN L. WELLS, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Stephen L. Wells, Respondent.

1. At all times pertinent to this matter, Respondent was the pesticide applicator and responsible licensee (Applicator License No. 038-68063) for GLT Farms, Inc., 4682 Rodell Barrow Road in Goldsboro, North Carolina 28534.
2. On July 23, 2015, Complainant's Inspector Mike Mitchell conducted an investigation into an allegation of drift filed by Mrs. Deborah Bailey. During the investigation, Complainant's Inspector met with Mrs. Bailey's husband at their residence and observed splotching of the leaves on the Baileys' sycamore tree. Mr. Bailey informed Complainant's Inspector that a pesticide application was made to a soybean field across from their house on July 21, 2015.
3. On July 23, 2015, following the interview with Mr. Bailey, Complainant's Inspector met with the Baileys' neighbor, Mr. Larry Shingleton. Mr. Shingleton also noticed that his hybrid poplars had been losing leaves recently.
4. Later that same day, Complainant's Inspector met with Respondent who confirmed that he applied Flexstar GT 3.5 Herbicide to his soybeans on July 21, 2015.
5. Complainant's Inspector requested that Dr. Henry Wade review the photographs taken during the investigation of this case and Dr. Wade concluded: "I reviewed this case, including the photos taken by Mike Mitchell. To a reasonable degree of scientific certainty, the damage to the trees was caused by pesticide drift from the soybean field farmed by Steve Wells."

6. Complainant's Inspector determined the following pesticides were involved:

Flexstar GT 3.5 Herbicide (fomesafen), EPA Reg. No. 100-1385, a diphenylether soybean herbicide, Class III, Caution.

7. The label statements obtained by Complainant's Inspector read as follows:

*Flexstar GT 3.5 Herbicide:*

**"Environmental Hazards ...** Do not apply when weather conditions favor drift from treated areas."

8. Laboratory analysis of the samples collected by Complainant's Inspector revealed the following:

**Lab Results**

	<u>Fomesafen</u>	<u>Glyphosate</u>	<u>AMPA</u>
MM-07 Non-target vegetation, Bailey sycamore tree	0.014 ppm	ND	ND
MM-08 Non-target vegetation, Shingleton poplar tree	0.007 ppm	ND	ND
MM-09 Target soil, Wells soybean field	0.568 ppm	0.915 ppm	0.490 ppm

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.



10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.


11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Five Hundred Dollars (\$500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Five Hundred Dollars (\$500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Five Hundred Dollars (\$500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(d) of this Agreement.

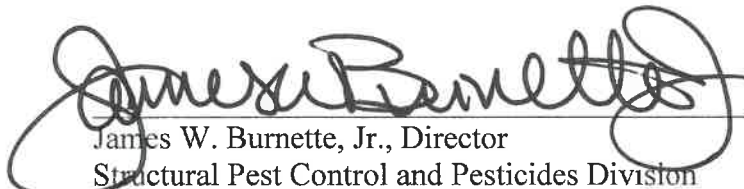
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

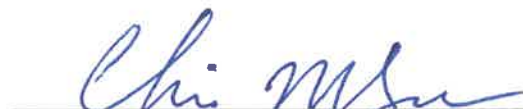
BY CONSENT:

  
Stephen L. Wells  
GLT Farms, Inc.  
4682 Rodell Barrow Road  
Goldsboro, North Carolina 28534

8-28-14  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

8/29/2016  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

8/29/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of September, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Stephen L. Wells,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Stephen L. Wells, Respondent  
Patrick N. Farquhar, Eastern Field Manager

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-70

# SETTLEMENT AGREEMENT

IR2015-70RSA

5. Complainant's Inspectors then reached out to Respondent to determine the details of the application, including the pesticides applied to the target field. Respondent confirmed the target field location and stated that the application was performed at approximately 1:00 pm on Tuesday, September 15, 2015. After several attempts to obtain the records of application and flight maps from Respondent, the documents requested were finally provided on October 8, 2015 via email correspondence to Complainant's Inspectors.

6. Based upon the allegations of Mr. Wehner, Complainant's Inspectors obtained soil and vegetation samples from Mr. Wehner's property and the target pumpkin field. The vegetation samples were taken 85 feet from Mr. Wehner's residence in order to determine if a chemical deposit was applied within 100 feet of his home.

7. In addition to the soil and vegetation samples obtained, Complainant's Inspectors observed and photographed honeybees working the blooms of the goldenrod vegetation near the pond located adjacent to the target pumpkin field. After reviewing these photographs, Donald Hopkins, Apiary Inspection Supervisor of the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division, provided Complainant's Inspectors with a letter stating in part that:

"The photographs taken the 16th demonstrate that bees were present in abundance on that day. The number of bees plus the condition of the florets on the plants indicate that the initiation of visitation would have preceded the date of these photographs by several days."

8. Based upon the samples obtained during the investigation, the following lab results were reported:

Sample No	Type	Location	Bifenthrin	Flonacomid
CC-25	Swab	Control	ND	ND
CC-26	Swab	Wehner window	ND	0.123ug
CC-27	Veg	Wehner flowerbed	0.28ppm	0.407ppm
CC-28	Veg	Wehner lawn	3.7ppm	3.85ppm
CC-29	Soil	Pumpkin	0.88ppm	0.301ppm
CC-30	Veg	Goldenrod field	0.99ppm	1.48ppm
CC-31	Veg	Pumpkin vines	10.0ppm	7.46ppm

- Metabolites of Flonacomid were found at low levels
- Sample CC029      Endosulfan II BQL<0.50 ppm  
                            Endosulfan Sulfate 1.6 ppm  
                            S-Metolachlor 0.13 ppm

9. The lab results confirmed the following pesticides where involved in the aerial application:

*Sniper* Insecticide (bifenthrin 25.0% ), EPA Reg. No. 34704-858

*Beleaf* 50 SG Insecticide (flonicamid 50%), EPA Reg. No. 71512-10-279

10. The registered labels for the pesticides used during the aerial application contain the following language:

*Sniper* and *Beleaf* Label states:

“Do not apply this product in a way that will contact workers or other persons either directly or through drift.”

*Sniper* labels states:

“This product is highly toxic to bees exposed to direct treatment or residues to blooming crops or weeds. Do not apply this product or allow to drift onto blooming crops or weeds while bees are actively visiting the treatment area.”

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443 (b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456(a) (2), (4) and (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

NCAC 09L .1005(e) and (f)

No pesticide shall be deposited within 100 feet of any residence.

No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Board as follows:

N.C. Gen. Stat. §143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.


13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Four Hundred Dollars (\$1,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Four Hundred Dollars (\$1,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Four Hundred Dollars (\$1,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

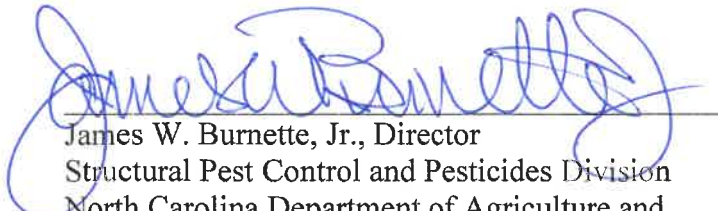


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Eugene J. Ritter  
Kritter Cropdusting, Inc.  
20634 Mt. Pony Road  
Culpepper, Virginia 22701

8/1/2016  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

August 3, 2016  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

8/17/2016  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of September, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



2015-70

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Eugene Kritter

**Respondent,**

Supplemental Information

Settlement conference was held with Eugene Kritter. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-21

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

BELIZA POWELL DECKER, Individually  
and d/b/a A GARDENER'S FRIEND,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Beliza Powell Decker (Individually and d/b/a A Gardener's Friend), Respondent.

1. At all times pertinent hereto, Respondent, Beliza Powell Decker was the owner and operator of "A Gardener's Friend," 298 Pinewood Trails, Sanford, North Carolina 27332. At no time relevant hereto did Respondent, or any employee at A Gardner's Friend, possess a North Carolina Pesticide license or certification.

2. On May 10, 2016, Complainant's Pesticide Inspector Douglas P. Bullard received a call from Inspector Brad Boyd regarding a complaint filed by Mr. Shawn E. Grubbs, a licensed pesticide applicator, against Respondent for making unlicensed pesticide applications to a residential property located in Sanford, North Carolina.

3. Based on the allegations, Complainant's Inspector conducted a telephone interview with Mr. Grubbs. During this interview, Mr. Grubbs reported that he witnessed an employee of Respondent applying pesticides to the residence of Ms. Rose Farrier. Mr. Grubbs also provided photographs he took during the application to Complainant's Inspector via email.

4. On May 16, 2016, Complainant's Inspector interviewed Ms. Farrier at her home. Ms. Farrier confirmed that the pesticide application was performed by Respondent's employee.

5. On May 17, 2016, Complainant's Inspector interviewed Respondent who admitted that her employee made the pesticide application to Ms. Farrier's residence under her direction. Respondent further accepted responsibility by providing a written and signed statement to Complainant's Inspector verifying that she was aware she needed to be licensed to apply pesticides commercially and had not obtained the proper certification through the State of North Carolina.

6. During the investigation, Respondent confirmed the pesticide applied with a backpack sprayer to Ms. Farrier's property was Roundup Quikpro at a rate of 2 ounces per acre and that the application was performed by Respondent's employee, Jonathan Alverado.

7. On May 23, 2016, Complainant's Inspector interviewed Mr. Alverado and he confirmed performing the pesticide application on May 9, 2016 to Ms. Farrier's residence. Complainant's Inspector also took pictures of the backpack sprayer used during the application at the time of this interview.

8. The specific pesticide involved in the pesticide application to Ms. Rose Farrier's residential property in Sanford, North Carolina is detailed below:

Roundup Quikpro Herbicide (glyphosate, diquat dibromide), EPA Reg. No. 524-535, a fast acting, non-selective herbicide, Class III, Caution.

9. Based on the results of our investigation, there is reason to believe that your acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

02 NCAC 09L .0503 (A)

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations. The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

N.C.G.S § 143-452(a)

No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

N.C.G.S. §143-456(a) (4), (5) and (15)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)

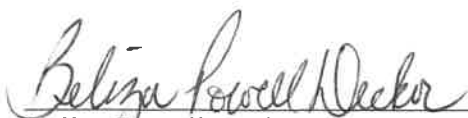
A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

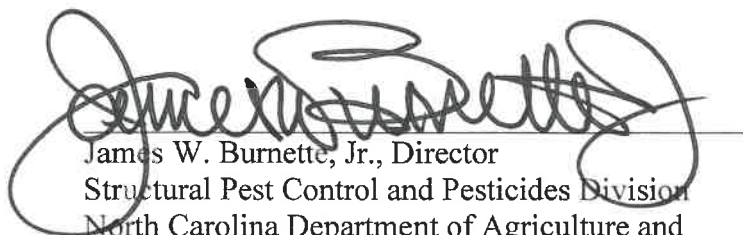
BY CONSENT:



Beliza Powell Decker  
(Individually and d/b/a A Gardner's Friend)  
298 Pinewood Trails  
Sanford, North Carolina 27332

8-9-16

Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

8/12/2016

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

8/17/2016

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of September, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



IR2016-021

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Beliza Powell Decker,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-73

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

PHILLIP DAVIS,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Phillip Davis, Respondent.

1. At all times pertinent to this matter, Respondent was the pesticide applicator and responsible licensee (Public Pesticide Operator License No. 032-7186) for the Cherokee County Recreation Department, 699 Conehetta Street, Murphy, North Carolina 28906.
2. On August 11, 2016, Complainant's Inspector, Bruce A. Nicely was conducting a routine restricted use pesticide (RUP) dealer sales inspection at Wayne's Feed Store located in Murphy, North Carolina and noted the purchase of the RUP Gramoxone SL 2.0 by Respondent, a public applicator.
3. Complainant's Inspector retained a copy of the sales record for this RUP purchase as he suspected that this RUP product may have been applied to an off-labeled site.
4. On August 25, 2016, Complainant's Inspector met with Respondent to discuss the purchase and application of the RUP Gramoxone SL. Respondent admitted to Complainant's Inspector that he purchased the RUP and confirmed the application was performed on July 18, 2016. Respondent stated that he applied the RUP along the fence lines of two different sites -- the fence line that fronts the public swimming pool and along the fence lines of the baseball complex. Respondent stated that he applied the RUP with a small sprayer attached to a mower and confirmed that no one was in either area at the time of the application or just following the application.



5. Based on these findings, Complainant's Inspector reviewed the label restrictions for Gramoxone SL 2.0 and determined that no site uses were permitted other than in agricultural and industrial areas.

6. The label statement reads as follows:

RESTRICTED USE PESTICIDE  
DUE TO ACUTE TOXICITY  
FOR RETAIL SALE TO AND USE ONLY BY CERTIFIED  
APPLICATORS OR  
PERSONS UNDER THEIR DIRECT SUPERVISION AND  
ONLY FOR THOSE USES  
COVERED BY THE CERTIFIED APPLICATOR'S  
CERTIFICATION.

DO NOT USE AROUND HOME GARDENS, SCHOOLS,  
RECREATIONAL PARKS,  
GOLF COURSES OR PLAYGROUNDS

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456 (a)(2), (4) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Board as follows:

N.C.G.S. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand, Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand, Two Hundred Dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand, Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

10. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

11. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Phillip Davis  
Phillip Davis  
Cherokee County Recreation Department  
699 Conehetta Street  
Murphy, North Carolina 28906

5-31-2017  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

6/5/2017  
Date

Christopher R. McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/2/2017  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 8<sup>th</sup> day of June, 2017

NORTH CAROLINA PESTICIDE BOARD

BY:

Paul Langley  
Chairman



2016-73

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Phillip Davis

**Respondent,**

Supplemental Information

No settlement conference was held with Phillip Davis. Respondent agreed to civil penalty without discussion.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File Nos. IR2014-072B

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

BRIAN NOAKES, )

Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Brian Noakes, Respondent.

1. At all times pertinent to this matter, Respondent was an aerial applicator and employee of Ag Air, LLC, and held Aerial Applicator License No. 027-837.
2. On October 9, 2014, Complainant's Inspector Eddie Nunn received a call from Pat Farquhar, Eastern District Manager, concerning possible pesticide exposure involving Ms. Alison E. Kopp of 3730 Nash Road in Fayetteville, North Carolina. Ms. Kopp was concerned about an aerial herbicide application to a forestry tract owned by Robert D. Taylor of 3613 Nash Road in Fayetteville. Ms. Kopp said there had been no notification to her about pesticide applications to the tract, which is located behind her property, and as a result of the exposure, her health was adversely affected.
3. After speaking with Ms. Kopp, Complainant's Inspector contacted Walter E. Thomas of Forest Land Resource Consultants in West End, North Carolina. Mr. Thomas wrote the reforestation plan for the involved forestry tract. Mr. Thomas said Jeff Tapley (License No. 030-1262) of Crop Production Services Timberland Division was the consultant and the tract had been divided in sections for site prep and site release. Mr. Thomas stated that Ag Air LLC of Thomasville, PA was the company involved in the spray application.

4. Complainant's Inspector immediately contacted Barry D. Phillips, Foreman with Ag Air LLC. Mr. Phillips confirmed that the application was performed by Respondent. He also stated that Arsenal AC (EPA Reg. No. 241-299) and Dupont Oust Extra (EPA Reg. No. 352-622) with Herbimax surfactant were used at a 10 gallon per acre rate to treat 53 acres in the site release. The purpose of the release application was to treat for suppression of woody growth among pine seedlings.

5. During the interview with Mr. Phillips, he stated that the site prep application involved Prep-It Herbicide (EPA Reg. No. 34704-989) and Roundup Pro Concentrate (EPA Reg. No. 524-529) with Choice Weather Master (Ammonium Hydroxide) surfactant at a rate of 15 gallons per acre to treat 46 acres. This application was done to clean off the area for planting of seedlings next year.

6. On October 9, 2014, Complainant's Inspectors Steve Gatton and Eddie Nunn met with Mr. Phillips and Respondent. During this interview, Respondent stated that the applications had been made that very morning with a 1975 Bell 206 Jet Ranger helicopter, using Accuflow 047 single row nozzles. The helicopter had previously been inspected and Complainant's Inspector Nunn took photographs of the helicopter and spray boom. Mr. Phillips provided product labels, application records, and site application maps for our use. Respondent informed us he flew from west to east over the application block (45' swath) and he tapered off as he approached the end of the block to allow for a buffer. Respondent also stated that a dirt road surrounding the property acted as an additional buffer.

7. Later that same day, Complainant's Inspectors Nunn and Gatton met with Ms. Kopp. Ms. Kopp confirmed she was outside that morning around 8:00 AM and saw the helicopter spraying the tract behind her house. Although she did not see anything coming out of the nozzles over her house, she could smell and taste the chemical. She stated that the helicopter went over her house 6 or 7 times. Ms. Kopp was very concerned due to health problems she experiences and she was afraid her and her property has been exposed to herbicides. She was also concerned about her pet birds and her dogs being exposed. Ms. Kopp indicated during the interview that she had not been to see a physician but she did have a headache since the application earlier that day.

8. On October 9, 2014, Complainant's Inspector Nunn took the following samples, which were transported to the residue lab on October 13, 2014:

EN-025B A vegetation sample was taken from an oak tree 75' from the back corner of Ms. Kopp's residence. This is 19' from the hinge side of an entry gate.

EN-026B A soil sample was taken 95' from the back corner of Ms. Kopp's residence in front of the entry gate in the chain link fence that, according to Ms. Kopp, is the property line. This was taken 3' from the hinge side of the gate.

EN-027B A vegetation sample was taken from a vine on the fence 98' from the back corner of the Kopp residence. This sample was taken 20' from the hinge side of the gate.

EN-028B A target sample was taken from vegetation on the forestry site. This sample was taken 108' from the hinge side of the gate on the property line.

9. Lab results for the samples taken by Inspector Nunn were:

Sample No.	Type	Location	Imazapyr	AMPA	Glyphosate
EN-25	Veg	75' Kopp Residence	0.79ppm	ND	1.62ppm
EN-26	Soil	95' fence Kopp Residence	0.018ppm	ND	0.16ppm
EN-27	Veg	98' fence Kopp Residence	0.031ppm	ND	1.55ppm
EN-28	Veg	Target	5.48ppm	1.17ppm	157ppm

10. These lab results indicate that a pesticide deposit occurred within 100 feet of the Kopp residence.

11. Based on the samples taken by Complainant's Inspector, the following pesticides were identified:

Prep-It Herbicide, Isopropylamine salt of imazapyr (244,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl-3-pyridinecarboxylic acid); Isopropylamine salt of glyphosate (N-(phosphonomethyl) glycine), EPA Reg. No. 34704-989, Caution, Class IV.

Roundup Pro Concentrate, Glyphosate, N-(phosphonomethyl) glycine, in the form of its isopropylamine salt, EPA Reg. No. 524-529, Caution, Class III.

Arsenal Herbicide Applicators Concentrate, Isopropylamine salt of imazapyr: (244,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl)-3-pyridinecarboxylic acid, EPA Reg. No. 241-299, Caution, Class IV.

DuPont Oust Extra Herbicide, Sulfometuron methyl (Methyl 2-[[[(4,6-dimethyl-2-pyrimidinyl) amino]-carbonyl]amino]sulfonyl]benzoate); Metsulfuron methyl Methyl 2-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonylbenzoate, EPA Reg. No. 352-622, Caution, Class IV.

12. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-456(a)(2), (4) and (5)---

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:



- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 N.C. Admin. Code 09L .1005(e) and (f)---

- (e) No pesticide shall be deposited within 100 feet of any residence;
- (f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Pesticide Board as follows:

N.C. Gen. Stat. § 143-469(b)---

- (b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Five Hundred Dollars (\$500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent shall voluntary surrender his North Carolina Aerial Applicator License No. 027-837 within thirty (30) days of the Board's approval of this Agreement. Respondent shall not reapply for his North Carolina Aerial Applicator License on or before December 31, 2018 (meaning for two additional years);
  - (i) Respondent's voluntary surrender of his North Carolina Aerial Applicator License does not constitute a revocation, suspension, or denial of said license.
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Five Hundred Dollars (\$500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Five Hundred Dollars (\$500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 14(d) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(d) of this Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Brian Noakes  
Brian Noakes  
Ag Air, LLC  
1529 West Vaughn Avenue  
Gilbert, Arizona 85233

1-25-17  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

2/3/2017  
Date

Christopher R. McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

2/2/2017  
Date

\*\*\*\*\*  
APPROVED AND ORDERED FILED,  
this the 14<sup>th</sup> day of March, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY: [Signature]  
Vice Chairman



2014-72B

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Brian Noakes

**Respondent,**

Supplemental Information

Settlement conference was held with Brian Noakes. Christopher McLennan, Assistant Attorney General for NCDA&CS-SPCPD settled this case. Respondent agreed to settlement and to pay civil penalty with discussion.



STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-53

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

LARRY G. WHITEHURST,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Larry G. Whitehurst, Respondent.

1. At all times pertinent to this matter, Respondent was the pesticide applicator and responsible licensee (Applicator License No. 038-66230) and his mailing address is Post Office Box 655, Robersonville, North Carolina 27891.
2. On July 28, 2015, Complainant's Inspector Chris Hassell responded to an email he received from Dr. Henry Wade regarding possible pesticide drift from a tobacco field that may have resulted in damage to Mr. Freddie Powell's pecan tree. Based on the allegations reported by Dr. Wade, Complainant's Inspector met with Mr. Powell later that same afternoon at his home in Williamston, North Carolina to investigate the damage to Mr. Powell's pecan tree.
3. Based on further inspection of Mr. Powell's pecan tree, Complainant's Inspector noted no evidence of drift or pesticide damage. Therefore, Mr. Powell did not file a complaint at that time.
4. However, on July 30, 2015, Mr. Powell contacted Complainant's Inspector and asked to file a complaint. Mr. Powell reported that a few months earlier, during the spring, he noticed damage to his flowerbeds from Command Herbicide.

5. During the investigation, Complainant's Inspector photographed a fern in Mr. Powell's flowerbed displayed whitening, which is a symptom of clomazone injury.

6. During his interview with Mr. Powell, Complainant's Inspector determined that the tobacco field in question belonged to David and Larry Whitehurst. Later that same day, on July 30, 2015, Complainant's Inspector met with Respondent, who confirmed the pesticide applications to his tobacco crop and provided Complainant's Inspector his application records.

7. According to his records, Respondent applied Acephate 90, Check Maleic Hydrazide and Fair 85 on July 6, 11, 17, and 24. His records also reflected that Command Herbicide was applied on April 23, 2015. Respondent reported that he did not notice any drift with any of the applications noted in his records. Respondent also stated that he was careful to leave a large area between the field and the Powell property on all three sides in order to move equipment around the field and provide a buffer between the tobacco field and the Powell property.

8. Based on the information provided during the interviews conducted, Complainant's Inspectors collected vegetation samples from Mr. Powell's pecan tree and flowerbed. Complainant's Inspector also collected a vegetation and soil sample from the adjacent target tobacco field. (Sample CH 31: non-target vegetation from the pecan tree taken 45ft from the Powell house, 52ft from the road and 41ft from the property line oak tree to the northwest. Sample CH32: non-target vegetation from the flowerbed taken 49ft from the southwest corner of the Powell house, 44ft from the road and 16 ft from the property line to the west. Samples CH33 and 34: target soil and vegetation taken 37ft from the road 341ft from the Powell property line.) Laboratory analysis of the samples collected revealed the following:

#### Lab Results

	<u>Clomazone</u>	<u>Acephate</u>
CH-31 Non-target vegetation, Powell pecan tree	ND	0.005 ppm
CH-32 Non-target vegetation, Powell flower bed area	BQL<3 ppb	0.09 ppm
CH-33 Target vegetation, Whitehurst tobacco field	0.008 ppm	1.54 ppm
CH-34 Target soil, Whitehurst tobacco field	0.073 ppm	ND

9. Complainant's Inspector determined the following pesticides were involved:

Command 3ME microencapsulated herbicide (clomazone), EPA Reg. No. 279-3158-5905, a selective, preplant-incorporated herbicide, Class III, Caution.

10. The label statements obtained by Complainant's Inspector read as follows:

*Command 3ME microencapsulated herbicide:*

**"DIRECTIONS FOR USE ... SPRAY DRIFT PRECAUTIONS ...** Do not apply when weather conditions favor drift. **... TOBACCO ... SPECIAL PRECAUTIONS ...** Prior to application, adjacent properties must be checked, and **spraying within 300 feet of desirable plants must be avoided."**

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:



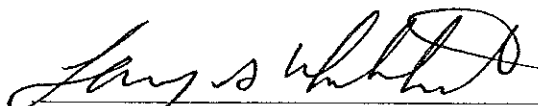
- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

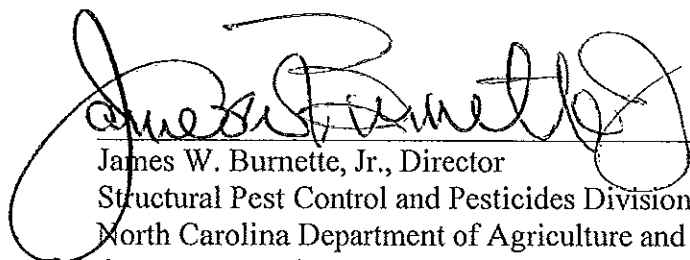
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



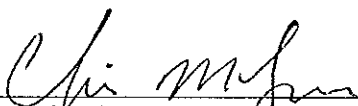
Larry G. Whitehurst  
Post Office Box 655  
Robersonville, North Carolina 27891

12-21-16  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-3-2017  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

1/2/2017  
Date

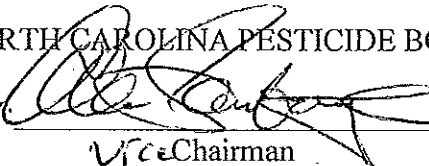
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of March, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY

  
Vice Chairman

IR2015-053

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Larry Whitehurst,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Larry Whitehurst, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-56

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

STEVEN A. SHARRETT,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Steven A. Sharrett, Respondent.

1. At all times pertinent to this matter, Respondent was an employee of Eastern Flying Services, Inc., and held Aerial Applicator (Pilot) License No. 027-851.
2. On August 10, 2015, Complainant's Inspector Paul H. Ward, III investigated a complaint by Mrs. Brandi B. Hardison of 275 Purser Road in Vanceboro, North Carolina 28586, regarding an aerial application intended for a soybean field adjacent to Mrs. Hardison's mother-in-law's residence.
3. Mrs. Hardison reported to Complainant's Inspector that she was present during an aerial pesticide application and that the airplane made several passes over her mother-in-law's home. Mrs. Hardison stated that she went outside to take pictures and video of the plane making the application, her lips and tongue went immediately numb and her chest became tight. She admitted that she did not feel any spray touch her or smell any pesticide odor during the aerial application.
4. Due to the severity of her symptoms, Mrs. Hardison sought medical evaluation that same day. Complainant's Inspector requested a copy of the physician's report, which indicated Allergic Disposition. During the interview, Mrs. Hardison also expressed great concern about her dogs that were in the yard at the time of the application.

5. During the investigation, Complainant's Inspector contacted the owners of the fields surrounding Mrs. Hardison's home. The field directly behind Mrs. Hardison's mother-in-law's home was owned by Glen Buck. When interviewed, Mr. Buck stated that he had not had an aerial application performed on his field this season. Upon further investigation, Inspector Ward discovered that the soybean field located adjacent to Mrs. Hardison's mother-in-law's property and farmed by John Ipock.

6. Inspector Ward contacted Mr. Ipock who confirmed that he hired James Brinkley with Eastern Flying Services, Inc., to apply pesticide to his soybean field. Inspector Ward then contacted Mr. Brinkley to obtain information regarding the application in question and learned that his employee, Respondent Steven Sharrett, was the pilot that performed the application. Respondent confirmed the application in question was performed the morning of August 10, 2015 and that Besiege was the pesticide applied to Mr. Ipock's soybean field. Respondent stated that he did not spray the entire soybean field during the application and thought he avoided any spray near the houses and power lines by the roadway.

7. Based upon Mrs. Hardison's allegations and statements made by Respondent, Complainant's Inspector obtained numerous soil and vegetation samples in and around Mrs. Hardison's property and the target soybean field.

8. Based upon the samples obtained during the investigation, the following lab results were reported:

Sample No	Type	Location	Lambda-cyhalothrin	chlorantraniliprole
PW-22	Swab	Check	ND	ND
PW-23	Swab	Hardison Home	ND	ND
PW-24	Veg	Collards	ND	ND
PW-25	Veg	Owens tree	ND	ND
PW-26	Veg	ROW Buck beans	ND	ND
PW-27	Veg	ROW Buck beans	ND	ND
PW-28	Veg	Target Bucks beans	ND	ND
PW-29	Veg	Target Bucks beans	ND	ND
PW-30	Veg	Target Ipocks beans	1.5ppm	5.2ppm
PW-31	Soil	Target soil PW-30	ND	ND
PW-32	Veg	ROW Nobles beans	1.1ppm	3.2ppm
PW-33	Soil	ROW PW-32	ND	ND
PW-34	Veg	ROW Ipock Beans	1.9ppm	6.4ppm
PW-35	Soil	ROW PW-34	ND	ND

9. The lab results confirmed the following pesticides where involved in the aerial application:

Beseige Insecticide, (Lambda-cyhalothrin and chlorantraniliprole), EPA Reg. 100-1402, Class II, Warning.

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-456(a) (2), (4) and (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

NCAC 09L .1005(c)

No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Board as follows:

N.C. Gen. Stat. §143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Eight Hundred Dollars (\$800.00) in eight (8) payments of One Hundred Dollars (\$100.00) each. Respondent's first payment of One Hundred Dollars (\$100.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining seven (7) installment payments, in the amount of One Hundred Dollars (\$100.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Eight Hundred Dollars (\$800.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469;

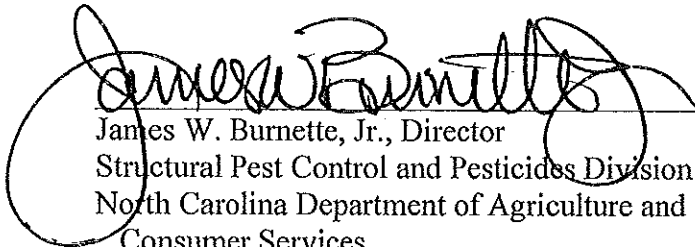
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

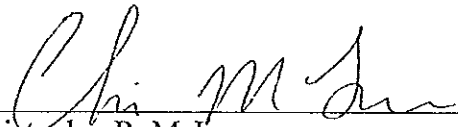
BY CONSENT:

  
Steven A. Sharrett  
Eastern Flying Services, Inc.  
10902 Arvind Oaks Court  
Charlotte, North Carolina 28277

3-3-2017  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

3/13/2017  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

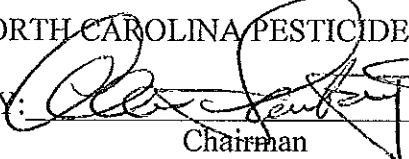
3/7/2017  
Date

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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of March, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman





2015-56

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Steven A. Sharratt.

**Respondent,**

Supplemental Information

Settlement conference was held with Steven Sharratt. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File No. IR2016-10

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

BRIAN R. HADDOCK, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Brian R. Haddock, Respondent.

1. At all times pertinent to this matter, Respondent was the owner of a farm located at 5931 Beaver Dam Road in Ayden, North Carolina 28513, and held Private Applicator License No. 038-60003.
2. On March 28, 2016, North Carolina Pesticide Inspector Paul Ward received notice that Mr. Donnie Haddock had filed a pesticide complaint with the Environmental Protection Agency regarding alleged pesticide dumping on a farm owned and operated by Respondent and which is located at 5931 Beaver Dam Road in Ayden, North Carolina.
3. On March 29, 2016, Complainant's Inspectors Paul Ward and William Dunn interviewed Mr. Donnie Haddock, who reported that he previously made pesticide applications for Respondent. Although he had not worked for Respondent in the last year, he stated that, during his employment, excess pesticides were dumped in the ditch bank of the farm owned and operated by Respondent. Donnie Haddock recalled dumping Tombstone, Gramoxone, Roundup and 2-4D.
4. Based on these allegations, Complainant's Inspectors interviewed Respondent and asked him to explain his pesticide disposal procedures and specifically confirm if he authorized pesticides to be dumped in the ditch banks of his farm. Respondent denied that any pesticides were dumped in the ditch banks and stated that he instructed all applicators to spray out all excess pesticides in the back field of the farm property.

5. During the interview with Respondent, Complainant's Inspectors conducted an inspection of the farm property. During the inspection, Complainant's Inspectors noted that pesticide containers being stored under a shelter on the farm property had no labels and therefore it was impossible to determine if the containers stored fertilizers, surfactants or pesticides. In addition to unlabeled containers, the area designated for pesticide storage contained propane cylinders.
6. In addition to the investigation into pesticide disposal, Inspector Ward conducted a Worker Protection Standard ("WPS") inspection and determined that Respondent failed to document any pesticide applications performed in 2016. Respondent confirmed that on March 23, 2016 Stealth pesticide was applied to his peanut field. Complainant's Inspector also noted that during the investigation, Respondent's son was applying Roundup Power Max II and Salvo to fields on the farm property. Respondent confirmed that all of his employees handled pesticides at some point and each was provided handler training.
7. Based on the information provided by Respondent, Complainant's Inspector interviewed Justin Andrews, an employee of Respondent. Mr. Andrews stated that he sprayed Respondent's soybean field during 2015, although he does not have a pesticide applicator license and he did not received any WPS training from his employer. Mr. Andrews denied dumping or disposing of any pesticide in the ditch banks of the farm.
8. Complainant's Inspector also interviewed Charles Sullivan, another employee of Respondent. Mr. Sullivan confirmed that he does perform pesticide applications on the farm and that he has received proper training from his employer. Mr. Sullivan denied ever dumping or disposing of pesticides in the ditch bank and stated that he sprays rinsate in the fields to clean the sprayer or simply sprays out the excess pesticide in the back field of the farm.
9. Complainant's Inspector then spoke with Respondent's son, Brandon Haddock. Brandon Haddock denied dumping any pesticides into the ditch banks or cleaning out the sprayers in the ditch banks of the farm property. Brandon also stated that he was not aware of any other employee disposing of pesticides in the ditch banks.
10. Upon further inspection of the property, Complainant's Inspector located a Poast Herbicide and Basagran Herbicide container in a trash pile that still contained pesticides. Neither container had been rinsed clean. Complainant's Inspector also identified containers in a dumpster located on farm property. One of the containers inspected still contained Stealth pesticide and had not been rinsed clean as required by the North Carolina Pesticide regulations.
11. Based on the information provided during the investigation, Complainant's Inspector collected soil samples from the bottom of the ditch bank in which Donnie Haddock confirmed previous pesticide disposal had occurred. Complainant's Inspector also took liquid samples from the Basagran Herbicide container that he found in the trash pile located on the backside of the farm property. These samples revealed the following:

<u>PW-004 (soil from ditch)</u>	<u>Amount Found</u>
Metolachlor	BQL<0.04 ppm
Bifenthrin	BQL<0.06 ppm
Paraquat	10.5 ppm
Cyfluthrin	ND
Bentazone	ND
2,4-DB	0.013 ppm
2,4-D	ND

<u>PW-005 (liquid from jug)</u>	<u>Amount Found</u>
Bentazone	147 ppm

12. The following pesticides were involved:

Stealth Herbicide (pendimethalin), EPA Reg. No. 34704-868, a dinitroaniline selective, preplant, preemergence, and early postemergence herbicide, Class III, Caution.

Roundup Powermax II Herbicide (glyphosate), EPA Reg. No. 524-537, a glycine defoliant/desiccant herbicide, Class III, Caution.

Salvo Herbicide (2,4-D), EPA Reg. No. 34704-609, a chlorinated phenoxy herbicide, Class III, Caution.

Basagran (bentazon), EPA Reg. No. 7969-45-51036, a benzothiadiazinone selective herbicide, Class III, Caution.

Poast Herbicide (sethoxydim), EPA Reg. No. 7969-58, a cyclohexanedione selective, postemergence herbicide, Class II, Warning.

13. The label statements for the pesticides involved are as follows:

*Stealth Herbicide, Roundup Powermax II Herbicide, and Salvo Herbicide:*

**"DIRECTIONS FOR USE ... AGRICULTURAL USE REQUIREMENTS** Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170. ..."

*Basagran Herbicide:*

**"STORAGE AND DISPOSAL ... Container Disposal: Plastic Containers:** Triple rinse the container (or equivalent). Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill, or by incineration, or, if allowed by state and local authorities by burning. ..."

*Poast Herbicide:*

**"STORAGE AND DISPOSAL ... Pesticide Disposal ...** If pesticide waste cannot be avoided, offer remaining product to a waste disposal facility or pesticide disposal program .... **Container Handling: Nonrefillable Container.** ... Triple rinse or pressure rinse container (or equivalent) promptly after emptying; then offer for recycling, if available, or reconditioning, if appropriate, or dispose of in a sanitary landfill ..."

14. Based on the results of our investigation, Complainant alleges that Respondent, either by acts or omissions, violated the following provisions of the North Carolina Pesticide Law and or/Regulations:

N.C.G.S. §143-441 (c)

No person shall dispose of, discard, or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, or to pollute any water supply or waterway, or in any manner contrary to the regulations of the Board.

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456 (a) (2) (4) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .0603 (a) and (b)

Prior to disposal, all pesticide containers shall be thoroughly emptied, using the practices commonly employed to remove materials from that type of container; e.g., shaking, pumping, pouring, triple-rinsing (or equivalent) and draining into the application tank. The materials so removed shall be applied to the labeled site or otherwise disposed of in accordance with these rules.

Pesticide containers shall be disposed of in accordance with labeling requirements. Note: In addition to the requirements of these rules, pesticide container disposal is also subject to rules adopted by the North Carolina Commission for Health Services as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste Management, as applicable, and to rules adopted by the North Carolina Environmental Management Commission as set forth in 15A NCAC 2D, Air Pollution Control Requirements.

02 NCAC 09L .0604 (1), (2), and (5)

No person shall dispose of any pesticide or pesticide container in any of the following manners:

In a manner inconsistent with these rules;

So as to cause or allow open dumping of pesticides or pesticide containers;

So as to violate any applicable provisions of the NCPL.

#### 02 NCAC 09L .1805 ADOPTION BY REFERENCE

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard."

49 CFR §170.222 Providing specific information about applications.

When handlers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

- (a) Location, accessibility, and legibility. The information shall be displayed in the location specified for the pesticide safety poster in §170.235(d) and shall be accessible and legible, as specified in §170.235 (e) and (f).
- (b) Timing.
  - (2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.
  - (3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.
- (c) The information shall include:
  - (1) The location and description of the treated area.
  - (2) The product name, EPA registration number, and active ingredient(s) of the pesticide.
  - (3) The time and date the pesticide is to be applied.
  - (4) The restricted-entry interval for the pesticide.

40 CFR §170.230 Pesticide safety training for handlers.

(a) *Requirement.* Before any handler performs any handling task, the handler employer shall assure that the handler has been trained in accordance with this section during the last 5 years, counting from the end of the month in which the training was completed.

5. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty and/or action against a license/certification, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations.

16. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Seven Hundred Dollars (\$1,700.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Seven Hundred Dollars (\$1,700.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Seven Hundred Dollars (\$1,700.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 16(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 16(c) of this Agreement.

- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

17. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

18. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.



WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Brian R. Haddock  
Brian R. Haddock  
5365 NC 102 East  
Grimesland, North Carolina 27837

12-15-16  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

12/22/2016  
Date

Chi McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

1/2/2017  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of March, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY: [Signature]  
Vice Chairman



IR2016-010

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Brian R. Haddock,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.



BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-11

File No. IR2016-11

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# SETTLEMENT AGREEMENT

v.

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Respondent.

3. On April 5, 2016, Complainant's Inspector met with the Hornes to discuss their symptoms and investigate their pesticide drift allegations. At that time, Mrs. Horne reported that she and her husband had only been in their front yard a few moments when they noted the pesticide application being performed on the adjacent soybean field and began to feel the mist from the application. She indicated that they immediately experienced a stinging and burning sensation on their skin and then began to develop headaches and burning sensation in their nose and throat area.

4. Neither Mr. nor Mrs. Horne sought any medical evaluation as a result of their exposure to the mist from the pesticide application, but they did continue to experience tingling to their exposed skin areas the following day. In addition, Mrs. Horne provided the name of the farm operator for the target field in question, which was Respondent.

5. As a result of the Hornes' interview, Complainant's Inspector collected samples from the shirt Mr. Horne was wearing when he felt the mist from the pesticide application. Complainant's Inspector also obtained vegetation samples from the target field and Horne property for further examination. Complainant's Inspector noted that he observed no symptoms of herbicide damage to any of the Horne property at the time of his inspection.

6. Following his interview with the Hornes, Complainant's Inspector met with Respondent to obtain additional information regarding the application made on the target field on April 4, 2016. During this interview, Respondent confirmed the application of Barrage HF and Roundup Power Max II to the Varnell Road soybean field in question which was performed by his employee, Mr. James Michael McKeel. Mr. McKeel stated that he did not recall experiencing any problems with the pesticide application and did not feel that any drift occurred. He also stated that he did not see the Hornes in their yard at the time of the application and, while he noted there was some wind at the time, he believed it was blowing in the opposite direction away from the Hornes' home.

7. Based on the interviews conducted and inspections performed, Complainant's Inspector requested that Mr. John Allran, the Environmental Toxicologist with the North Carolina Department of Agriculture and Consumer Services, Pesticide Division review the symptoms complained of by Mr. and Mrs. Horne. Mr. Allran provided the following statement, "It is reasonable that the symptoms that Mrs. Horne and her husband are describing are due to direct drift of these herbicides. These symptoms are typical of localized irritation (eyes, skin, nose/throat) but for a brief low level exposure, which should be transient and not give cause for concern for systemic toxicity. Because Barrage is the ester form of 2,4-D, it only carries the Signal Word Caution and may only cause skin irritation, ... ."

8. Complainant's Inspector determined the following pesticides were involved:

Barrage HF Herbicide (2,4-D), EPA Reg. No. 5905-529, a chlorinated phenoxy herbicide, Class III, Caution.

9. The label statements obtained by Complainant's Inspector read as follows:

*2,4-D amine 4 Herbicide:*

**"DIRECTIONS FOR USE** ... Do not apply this product in a way that will contact workers or other persons, either directly or through drift. ... **SPRAY DRIFT MANAGEMENT** ... **Wind Speed** ... Only apply this product if the wind direction favors on-target deposition and are not sensitive areas (including, but not limited to, residential areas ...) within 250 feet downwind. **Susceptible Plants** ... Do not apply under circumstances where spray drift may occur to food,

forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use, or consumption. ...”

10. Laboratory analysis of the samples collected by Complainant’s Inspector revealed the following:

**Lab Results**

	<u>2,4-D</u>	<u>Glyphosate</u>	<u>AMPA</u>
BD-01 Non-target, Johnny Horne shirt	ND	ND	ND
BD-02 Non-target vegetation, Horne yard	0.088 ppm	ND	ND
BD-03 Non-target vegetation, Horne Hydrangea	ND	ND	ND
BD-04 Non-target vegetation, Horne Red Cedar	BQL<0.02ppm	ND	ND
BD-05 Target vegetation, Gray soybean field	19.2 ppm	123 ppm	1.43 ppm

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S §143-456 (a) (2) (4) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is

necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

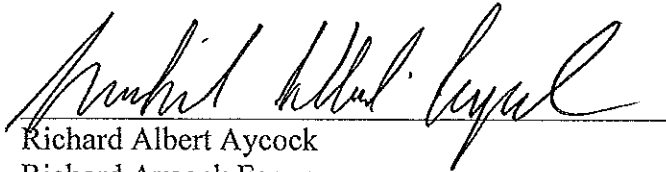
14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.



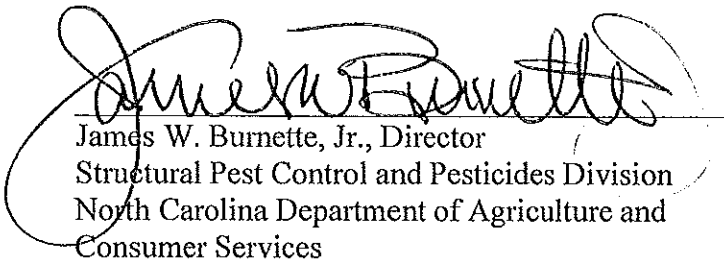
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



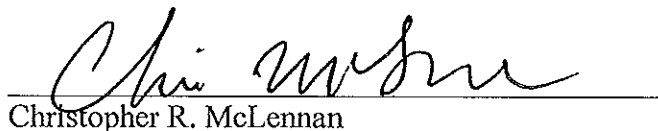
Richard Albert Aycock  
Richard Aycock Farms  
7619 Woodbridge Road  
Stantonsburg, North Carolina 27883

12-12-16  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

12/14/2016  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

12/14/2016  
Date

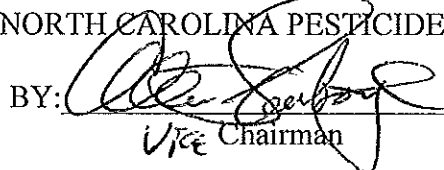
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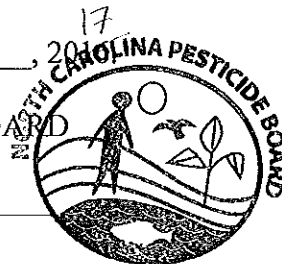
APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of March, 2017

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Vice Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Richard A. Aycock,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Richard A. Aycock, Respondent  
Patrick N. Farquhar, Eastern Field Manager



BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-17

File No. IR2016-17

Respondent.

# SETTLEMENT AGREEMENT

IR2016-17RSA

		<u>Glyphosate</u>	<u>AMPA</u>	<u>2,4-D</u>
DB-19	Non-target vegetation, Barnes garden	ND	ND	ND
DB-20	Non-target soil, Barnes garden	ND	ND	ND
DB-21	Non-target vegetation, Barnes wooded area	1.80 ppm	ND	1.25 ppm
DB-22	Non-target soil, Barnes wooded area	ND	ND	ND
DB-23	Target soil, Bailey soybean field	54.6 ppm	1.12 ppm	6.28 ppm
DB-24	Target soil, Bailey soybean field	0.442 ppm	0.520 ppm	0.010 ppm

5. The following pesticides were identified in the samples obtained by Complainant's Inspector during the investigation:

Roundup Powermax II Herbicide (glyphosate), EPA Reg. No. 524-537, a defoliant/desiccant herbicide, Class III, Caution.

Weedar 64 Herbicide (2,4-D), EPA Reg. No. 71368-1, a chlorinated phenoxy herbicide, Class 1, Danger.

6. The label statements obtained by the inspector read as follows:

Weedar 64 Herbicide:

"DIRECTIONS FOR USE ... SPRAY DRIFT MANAGEMENT ... Only apply this product if the wind direction favors on-target deposition and there are not sensitive areas (including, but not limited to, residential areas, bodies of water, known habitat for non-target species, non-target crops) within 250 feet downwind."

7. On April 26, 2016, based upon the information provided by Mr. Barnes during the investigation, Complainant's Inspector interviewed Respondent, with Bailey Bros. Ag Partnership. During the interview, Respondent confirmed the burndown pesticide application (pre-plant) to the soybean field on April 15, 2016 between 10:00 a.m. and 12:30 p.m. He also confirmed the use of Roundup Powermax II and Weedar 64 for the burndown application.

8. Complainant's Inspector requested that Dr. Allen York, Professor Emeritus with North Carolina State University Crop and Soil Sciences review the photographs taken during the investigation. Based upon his review of the photographs taken during the investigation, Dr. York concluded "The foliage from the fence row clearly has phenoxy herbicide symptoms."

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;

- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

12. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

13. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

*By Johnny Bailey*  
*Bailey Bros. Ag Partnership*

Johnny R. Bailey  
Bailey Bros. Ag Partnership  
3805 Bull Head Road  
Bailey, North Carolina 27807

*12-12-16*  
Date

*James W. Burnette, Jr.*

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

*12/16/2016*  
Date

*Chi M. Lennan*

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

*12/16/2016*  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the *14<sup>th</sup>* day of *March*

NORTH CAROLINA PESTICIDE BOARD

BY: *Alan Tubey*  
Vice Chairman





NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Johnny R. Bailey,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Johnny R. Bailey, Respondent  
Patrick N. Farquhar, Eastern Field Manager

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-18

File No. IR2016-18

[illegible]

## SETTLEMENT AGREEMENT

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5. During the interview, Mr. Donald Turbeville stated that a small buffer strip was maintained between the field and Mr. Wilson's property, although Mr. Wilson mows the strip as though it is part of his yard. Mr. Turbeville believes that if the buffer strip was allowed to grow, it could provide Mr. Wilson's property a shield from pesticide applications and possible drift damage.

6. Based upon the information provided during the investigation, Complainant's Inspector collected vegetation and soil samples from Mr. Wilson's yard and non-target plants, as well as the target peanut field. Laboratory analysis of the samples collected by the inspector revealed the following:

		<u>Glyphosate</u>	<u>AMPA</u>	<u>Flumioxazin</u>
JM-20	Non-target blueberry vegetation, Wilson yard	BQL<0.750 ppm	ND	0.056 ppm
JM-21	Non-target soil, Wilson yard	ND	0.080 ppm	ND
JM-22	Non-target dogwood vegetation, Wilson yard	2.97 ppm	ND	0.139 ppm
JM-23	Target vegetation, Turbeville peanut field	3.11 ppm	0.581 ppm	0.260 ppm
JM-24	Target soil, Turbeville peanut field	1.49 ppm	0.669 ppm	0.396 ppm

7. The following pesticides were identified in the samples obtained by Complainant's Inspector during the investigation:

Gly Star Plus Herbicide (glyphosate), EPA Reg. No. 42750-61, Defoliant/Desiccant, Herbicide, Class III, Caution.

Valor Herbicide (flumioxazin), EPA Reg. No. 59639-99, a water dispersible granule herbicide, Class III, Caution.

8. The label statements obtained by the inspector read as follows:

*Gly Star Plus Herbicide:*

**"DRIFT PRECAUTION** Do not allow the herbicide solution to mist, drip, drift, or splash onto desirable vegetation. ... To prevent injury to adjacent desirable vegetation, appropriate buffer zones must be maintained. ... Do not apply within 100 feet of any desirable vegetation."

*Valor Herbicide:*

**"ENVIRONMENTAL HAZARDS** ... Do not apply when weather conditions favor drift from treated areas. ... **RESTRICTIONS AND LIMITATIONS...** Do not apply this product when weather conditions favor spray drift from treated areas."

9. Based upon Complainant's Inspector's findings during the investigation, he consulted Dr. Allen York, Professor Emeritus with North Carolina State University Crop and Soil Sciences and requested he review the photographs taken during the investigation of this case. Based upon his review of this case, Dr. York concluded "The spotting and necrosis in the pictures would be about what I would expect from flumioxazin."

10. In addition to the above, Complainant's Inspector sought additional consultation from Mr. Wayne E. Mitchem, North Carolina State University Researcher and Extension Associate regarding any injuries to Mr. Wilson's grapevines as a result of the pesticide application at issue. Based upon his review of this case, Mr. Mitchem reported that: "As far as the grapes go, the injury is consistent with the symptoms of a glyphosate + flumioxazin tank mix."

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

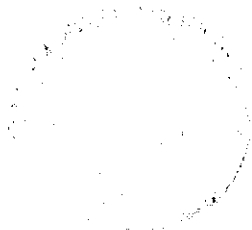
Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. §143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

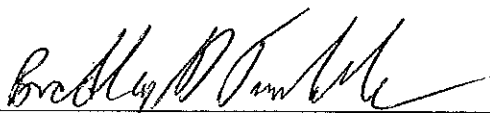
14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.



WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

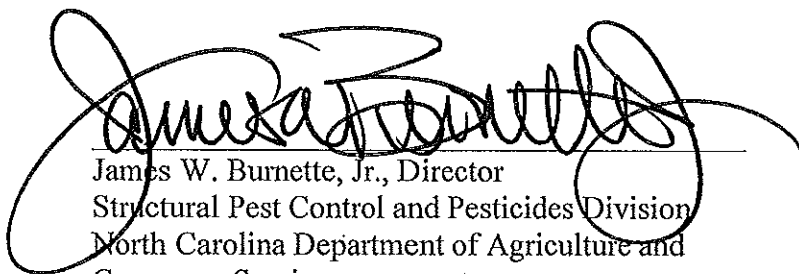
BY CONSENT:



Bradley D. Turbeville  
6509 Andrew Jackson Highway  
Cerro Gordo, North Carolina 28430

1-11-17

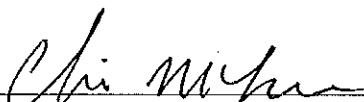
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-23-2017

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

1-18-17

Date

\*\*\*\*\*

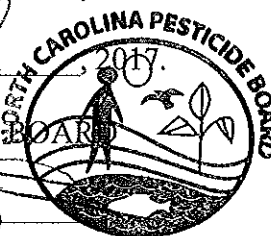
APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of March

NORTH CAROLINA PESTICIDE BOARD

BY:

Vice Chairman



IR2016-018

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Bradley D. Turbeville,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Bradley D. Turbeville, Respondent  
Patrick N. Farquhar, Eastern Field Manager





STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-19

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JAMESON QUINN,

Respondent.

SETTLEMENT AGREEMENT

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Jameson Quinn, Respondent.

1. At all times pertinent to this matter, Respondent was the pesticide applicator and resides at Quinn Farms, 2316 Wintergreen Road, Cove City, North Carolina 28523.

2. On May 11, 2016, Complainant's Inspector Paul H. Ward, III met with Mr. Edward C. Stokes of 3960 North Carolina Highway 102 East in Ayden, North Carolina regarding alleged drift damage to Mr. Stokes' property, including his pecan tree, grass, magnolia bush, plum tree, grape vine, oak tree and other vegetation, resulting from a pesticide application performed on adjacent tobacco fields on April 6 and/or 7, 2016.

3. During that interview, Mr. Stokes reported that he has three tobacco fields surrounding his property. He stated that the vegetation on his property was turning white and yellow. Complainant's Inspector identified the discoloration on pecan tree leaves, grass, magnolia bush leaves, plum tree leaves, grape vine leaves, oak tree leaves and other vegetation within Mr. Stokes' yard.

4. The following day, based on Mr. Stokes' allegations, Complainant's Inspectors Paul Ward and John Colborne met with Respondent of Quinn Farms, who leases the three tobacco fields adjacent to Mr. Stokes' property from Stancil Farms. At that time, Respondent reported that he only applied Command 3ME and Spartan Charge on the target fields. He also confirmed that these pesticides were applied with a ground sprayer on April 6 and 7, 2016 and the wind was out of the south to southwest during the applications.

5. Based upon the information provided during the investigation, Complainant's Inspector collected vegetation and soil samples from Mr. Stokes' yard, as well soil samples from the three target tobacco fields adjacent to Mr. Stokes' property. Laboratory analysis of the samples collected by the inspector revealed the following:

		<u>Command</u>	<u>Carfentrazone</u> <u>-ethyl</u>	<u>Flumioxazin</u>
PW-06	Non-target magnolia vegetation, Stokes yard	7.66 ppb	ND	ND
PW-07	Non-target soil, Stokes yard	ND	ND	ND
PW-08	Non-target magnolia vegetation, Stokes yard	4.81 ppb	ND	ND
PW-09	Non-target soil, Stokes yard	2.05 ppb	ND	ND
PW-10	Non-target plum tree vegetation, Stokes yard	5.50 ppb	ND	ND
PW-11	Non-target soil, Stokes yard	57.0 ppb	ND	53.8 ppb
PW-13	Target soil, Quinn tobacco field	44.1 ppb	ND	66.63 ppb
PW-15	Target soil, Quinn tobacco field	155 ppb	ND	105 ppb
PW-17	Target soil, Quinn tobacco field	198 ppb	ND	142 ppb

6. The following pesticides were identified in the samples obtained by Complainant's Inspector during the investigation:

Command 3ME Herbicide (clomazone), EPA Reg. No. 279-3158, a selective, preplant-incorporated herbicide, Class III, Caution.

Spartan Charge Herbicide (carfentrazone-ethyl and sulfentrazone), EPA Reg. No. 279-3337, an triazolinone broadleaf and grass herbicide, Class III, Caution.

7. The label statements obtained by the inspector read as follows:

*Command 3ME Herbicide:*

**“DIRECTIONS FOR USE ... SPRAY DRIFT PRECAUTIONS ...** Do not apply when weather conditions favor drift. ... **TOBACCO ... SPECIAL PRECAUTIONS ...** Prior to application, adjacent properties must be checked, and spraying within 300 feet of desirable plants must be avoided.”

*Spartan Charge Herbicide:*

**“APPLICATION INFORMATION ...** Do not apply near desirable vegetation. ... Do not apply when wind speed favors drift beyond the area of treatment.”

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S §143-456 (a) (2) (4) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Six Hundred Dollars (\$1,600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

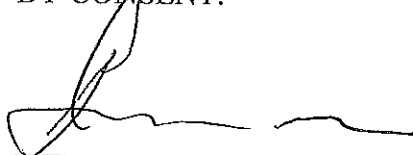
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Six Hundred Dollars (\$1,600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Six Hundred Dollars (\$1,600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

11. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

12. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

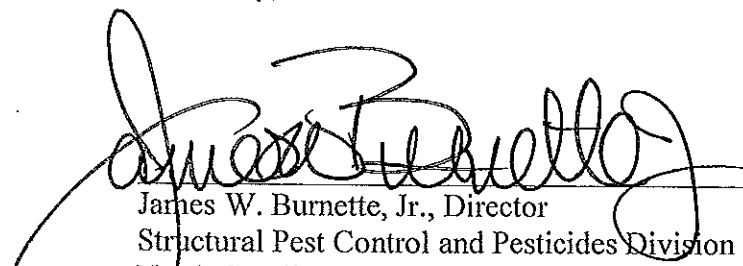
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



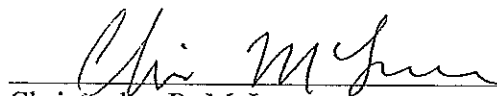
Mr. Jameson Quinn  
Quinn Farms  
2316 Wintergreen Road  
Cove City, North Carolina 28523

12-23-16  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-3-2017  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

12-30-16  
Date

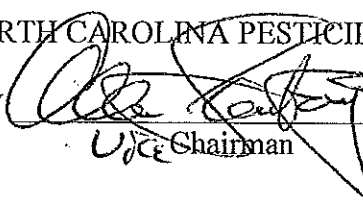
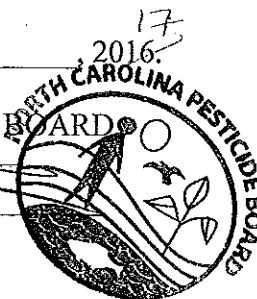
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of March

NORTH CAROLINA PESTICIDE BOARD

BY

  
Vice Chairman

IR2016-019

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

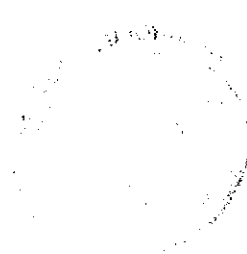
Jameson Quinn,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-23

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JERRY A. BRYANT,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Jerry A. Bryant, Respondent.

1. At all times pertinent to this matter, Respondent was the pesticide applicator and responsible licensee (Applicator License No. 038-84146) for Friendship Farms, 255 Daydream Lane, Lexington, North Carolina 27295.
2. On May 25, 2016, North Carolina Pesticide Inspector Eric Ball investigated a complaint by Mr. Chris Odell McMahan of 384 El McMahan Farm Road in Lexington, North Carolina regarding possible pesticide drift damage that resulted from a pesticide application to a soybean field adjacent to his property.
3. At the time of Complainant's Inspector's interview with Mr. McMahan, Mr. McMahan reported that he believed his neighbor, Respondent, who farms soybeans adjacent to Mr. McMahan's property, is responsible for the drift damage to his garden and cornfield. Mr. McMahan confirmed that he had not made any pesticide applications to his garden or corn field.
4. Complainant's Inspector also interviewed Larry O'Neal Hanes, who indicated that he also maintained a garden and grape vines adjacent to one of the target fields and that he believed they had been damaged by drift from the application at issue. At the time of the inspection, Complainant's Inspector observed damage to the grape vines and corn planted in Mr. Hanes' garden that was consistent with herbicide exposure. Mr. Hanes confirmed that he had not made any pesticide applications to his garden.



5. Based on these allegations, Complainant's Inspector interviewed Respondent to discuss his pesticide applications to the soybean field adjacent to Mr. McMahan's property. Respondent confirmed that on May 10, 2016 he applied Roundup Powermax to his soybean field as a burndown. He recorded wind speeds ranging from 4-8 miles per hour on the date of the application, which could result in the product drifting off target. The nozzles used for the application were 11003 at 30 psi, which were within range for the product in question.

6. Based on the information provided during the interviews conducted, Complainant's Inspector obtained soil and vegetation samples of the target and non-target areas. Laboratory analysis of the samples collected by the inspector revealed the following:

Sample No	Type	Type	Location	Glyphosate	AMPA
EB-29	Veg	Nontarget	Grape leaves	0.913ppm	ND
EB-30	Veg	Nontarget	Corn Leaves	ND	ND
EB-31	Soil	Nontarget	Hanes Garden	ND	BQL<.250ppm
EB-32	Veg	Nartarget	Weed leaves	ND	ND
EB-33	Soil	Target	Bryant Field	ND	0.309ppm
EB-34	Veg	Target	Bryant Field	4.56ppm	ND
EB-35	Veg	Nontarget	Corn Leaves	ND	ND
EB-36	soil	Target	Bryant Field	ND	BQL<.250ppm

7. Complainant's Inspector determined the following pesticides were involved:

Roundup Powermax (glyphosate), EPA Reg. No. 534-537, Class III, Caution.

8. The label statements obtained by Complainant's Inspector read as follows:

Roundup Powermax Label states:

"Avoid contact with this herbicide with foliage, green stems, exposed non-woody roots, fruit of crops, desirable plants and trees, as severe injury or destruction may result."

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S §143-456 (a) (2) (4) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

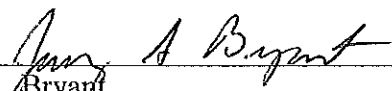
- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

12. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

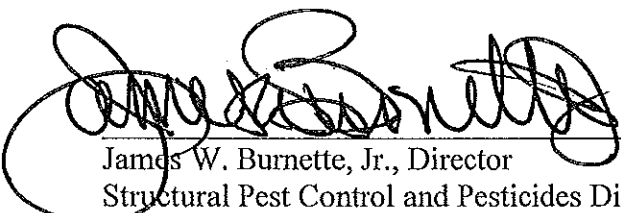
13. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

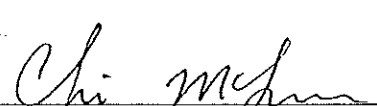
BY CONSENT:

  
Jerry A. Bryant  
Friendship Farms  
255 Daydream Lane  
Lexington, North Carolina 27295

2/15/17  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

2/23/2017  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

2/22/17  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of March

NORTH CAROLINA PESTICIDE BOARD

BY   
Vice Chairman



IR2016-023

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

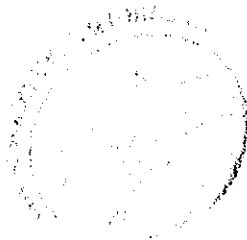
Jerry A. Bryant,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Jerry A. Bryant, Respondent  
Dwight E. Seal, Western Field Manager



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-1

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

WILLIAM TOM PACE,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and William Tom Pace, Respondent:

1. At all times pertinent to this matter, Respondent was an employee of Sandy Ridge Berry Company, a subsidiary of Reiter Berry Company and maintained Private Applicator License No. 038-85099. Respondent currently resides at 8989 Misty Lane in Zirconia, North Carolina 28790
2. In November of 2014, a North Carolina Pesticide Inspector was contacted by Henderson County Extension Agent, Craig Mauney regarding a complaint filed by Mr. Mike Pack of M&M Berry Farm regarding possible herbicide drift damage to his patented/proprietary blackberries that resulted from an application of Remedy Ultra (triclopyr) and Showdown Herbicide (glyphosate) by Respondent, an employee of Sandy Ridge Berry Company, a subsidiary of Reiter Berry Company.
3. Complainant's Inspector Charles Clark spoke with Mr. Pack and learned that his farm was previously operated by Sandy Ridge Berry Company, a subsidiary of Reiter Berry Company of California. Sandy Ridge Berry Company, a subsidiary of Reiter Berry Company elected to close their farm and, per the contract, instituted the destruction of any existing berry plants owned by Sandy Ridge Berry Company, a subsidiary of Reiter Berry Company that were contained in the block on the upper side of the farm. All berry plants owned by Mr. Pack, which were mostly contained on the lower side of the farm, would be preserved.

4. On November 3, 2014, Complainant's Inspector investigated the Sandy Ridge Berry Company, a subsidiary of Reiter Berry Company and observed Respondent and two additional handlers making the herbicide application of Remedy Ultra (triclopyr) and Showdown Herbicide (glyphosate) on the berry block located on the upper side of the farm. Complainant's Inspector spoke with Respondent regarding the possibility of drift and control measures to be taken when making application to the lower berry block in order to avoid damage to Mr. Pack's blackberry plants. Complainant's Inspector also confirmed that Respondent held a current North Carolina Private Applicator License and that the two handlers assisting him with the application were properly trained.

5. Based on Complainant's Inspector Clark's findings, there was no evidence of pesticide drift damage to Mr. Pack's blackberry block at the time of the November 3, 2014 inspection.

6. On January 5, 2015, Complainant's Inspector was contacted again by Mr. Pack regarding damage to several rows of his blackberries as a result of the November application. During further investigation of the Sandy Ridge Berry Company, a subsidiary of Reiter Berry Company, Complainant's Inspector learned that the lower block of berries consisted of 39 tunnels. Each tunnel covered two rows of berries and was located downhill from the upper block of berries. Complainant's Inspector observed being sprayed during the investigation conducted on November 3, 2014. The first row of berries is located outside of a tunnel, while Rows 2 and 3 are contained within the first tunnel. The second tunnel contained rows 4 and 5, and so on, for a total of approximately 79 rows of blackberries.

7. During his interview with Mr. Pack, Complainant's Inspector learned that several rows of blackberries in the lower block were also under contract to be destroyed pursuant to the closing of Sandy Ridge Berry Company, a subsidiary of Reiter Berry Company. Mr. Pack alleged that several of his rows of blackberries were mistakenly included in the herbicide application performed to destroy the Sandy Ridge Berry Company, a subsidiary of Reiter Berry Company's proprietary blackberries.

8. As a result of these allegations, Complainant's Inspector interviewed Respondent who stated that, after returning to the fields on February 13, 2015 and observing the damage to the affected areas, he admitted that he had mistakenly sprayed several rows of blackberries that belonged to Mr. Pack. Respondent conceded that he should have stopped the herbicide application at rows 18 and 19 and that the damage was not a result of drift but accidental application of the destructive herbicide on the blackberry plants owned by Mr. Pack.

9. Based on these findings, Complainant's Inspector obtained soil and vegetation (berry cane) samples from the target and non-target areas of the lower block of blackberry plants. These samples were obtained from Rows 16 and 17 (target) and 19 and 20 (non-target).

10. The samples collected identified the following pesticides were involved in the application in question:

Remedy Ultra (triclopyr), EPA Reg. No. 62719-552, Class III Caution.

Showdown Herbicide (glyphosate), EPA Reg. No. 71368-25-5905, Class III Caution.

11. The following lab results were obtained from the samples collected:

Sample No	Type	Location	Triclopyr	Glyphosate	AMPA
CC-1	Veg	Pack Berries	10.0ppm	10.5ppm	BQL
CC-2	Soil	Pack Berries	1.3ppm	1.1ppm	0.65ppm
CC-3	Veg	Reiter Berries	2.9ppm	5.16ppm	BQL
CC-4	soil	Reiter Berries	0.11ppm	0.36ppm	BQL

12. The label statements for the pesticides identified in the lab results noted above are as follows:

*Remedy Label states:*

"For the control of woody plants and broadleaf weeds on rangelands, permanent grass pastures, and conservation reserve programs (CRP) acres."

*Showdown Herbicide states:*

"For use in certain cropping systems like Roundup Ready Corn, Cotton and soybeans. For reduced tillage and fallow ground and many noncrop areas."

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S § 143-456 (a) (2) (4) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:



N.C.G.S. §143.440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) only for willful violations.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Seven Hundred Dollars (\$700.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Seven Hundred Dollars (\$700.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Seven Hundred Dollars (\$700.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

16. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

17. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

William Tom Pace  
William Tom Pace  
8989 Misty Lane  
Zirconia, North Carolina 28790

7-18-17  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

7-25-2017  
Date

Christopher R. McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

7/25/2017  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14 day of NOVEMBER, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY Vice Chairman



2015-01

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

William Tom Pace

**Respondent,**

Supplemental Information

Settlement conference was held with William Tom Pace. Respondent agreed to civil penalty with discussion.



STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File No. IR2015-13

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

WILLIAM D. HALL,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and William D. Hall, Respondent.

1. At all times pertinent to this matter, Respondent, William "Dusty" Hall was employed by Crabbe Aviation LLC, and held Aerial Applicator (Pilot) License No. 027-785.
2. On April 29, 2015, Complainant's Inspector Paul H. Ward, III, investigated a complaint by Timothy Mudge, 713 Dry Ridge Road, Elizabeth City, North Carolina, regarding an aerial application, intended for the wheat field adjacent to his property, which occurred earlier that same day over his home while he was outside on the back porch of his residence and resulted in pesticide exposure to his skin.
3. Complainant's Inspector met with Mr. and Mrs. Mudge on April 29, 2015 and conducted an investigation of the aerial application. Although Mr. Mudge was not willing to provide the clothing he was wearing at the time of the application, his wife provided a photograph of the plane over their residence during the application. The photograph depicts a yellow plane with a blue strip. Complainant's Inspector further noted that a plane of the same description began spraying other fields in the area while Complainant's Inspector was conducting the investigation of Mr. Mudge's property.

4. Complainant's Inspector took photographs of the area and collected the following vegetation samples:

PW-009	Check Swab sample.
PW-010	Swab sample from Mudge house window located 22 feet 3 inches from Mark Small's wheat field.
PW-011	Vegetation sample of Crape Myrtle leaves on tree in Mudge yard located 17 feet to the corner of the porch and 35 feet 6 inches from Mark Small's wheat field.
PW-012	Vegetation sample of Maple tree leaves on Maple tree in Mudge yard located 20 feet to the corner of the Mudge home and 13 feet to Mark Small's wheat field.
PW-013	Vegetation sample of weeds and grass and vegetation sample in Mudge garden located 44 feet 6 inches from the corner of Mudge home and 7 feet to Mark Small's wheat field on the side and 12 feet to Mark Small's wheat field in the back.
PW-014	Vegetation sample collected from Dry Ridge Road r-o-w located 5 feet 7 inches west of the white line.
PW-015	Vegetation sample collected from Dry Ridge Road r-o-w located 9 feet 4 inches east of the white line.
PW-016	Target vegetation sample of wheat in Mark Small's wheat field beside Mudge home.
PW-017	Target vegetation sample of wheat in Mark Small's wheat field behind Mudge home

5. On April 30, 2015, Complainant's Inspector stopped by C.A. Perry and Son to ask who farmed the fields adjacent to Mr. Mudge's property and was informed that Mark and Jeff Small are responsible for tending those fields. That same day, Complainant's Inspector met separately with Mark and Jeff Small to discuss his investigation of the aerial application to the field adjacent to Mr. Mudge's residence and obtain information regarding the aerial applicator.

6. Both Mark and Jeff Small indicated that they hired Matt Crabbe of Crabbe Aviation to treat their fields. Neither gentlemen were certain which pesticides were used during the applications, however Jeff Small reported that Respondent was the actual aerial applicator on April 29, 2015.

7. On that same day, Complainant's Inspector met with Respondent to discuss the details of the aerial applications he performed for Mark and Jeff Small on April 29, 2015. Respondent reported that he applied Quilt Xcel, Baythroid and Promote to the wheat field adjacent Mr. Mudge's property. He also indicated that he had left a buffer along Dry Ridge Road during his application to avoid Mr. Mudge's house and power wires.

8. Complainant's Inspector reported the following lab results from the vegetation samples obtained during the investigation:

**Lab Results**

Sample #	Location	Azoxystrobin	Propiconazole	Beta-Cyfluthrin
PW-09	Check swab	ND	ND	ND
PW-10	Swab from Mudge house	75 ug	41 ug	12 ug
PW-11	Mudge crepe myrtle vegetation	16 ppm	10 ppm	3.2 ppm
PW-12	Mudge maple vegetation	11 ppm	8.8 ppm	2.4 ppm
PW-13	Mudge garden vegetation	1.8 ppm	2.0 ppm	0.37 ppm
PW-14	Dry Ridge Rd. r-o-w	ND	0.74 ppm	ND
PW-15	Dry Ridge Rd. r-o-w	ND	0.50 ppm	ND
PW-16	Mark Small wheat	ND	1.0 ppm	ND
PW-17	Mark Small wheat	2.9 ppm	2.2 ppm	0.63 ppm

9. The lab results confirmed the following pesticides were involved in the aerial application:

Quilt Xcel Fungicide (azoxystrobin, propiconazole), EPA Reg. No. 100-1324, a strobilurin/triazole fungicide, Class II, Warning.

Baythroid XL (B-cyfluthrin), EPA Reg. No. 264-840, a synthetic pyrethroid insecticide, Class II, Warning.

Tilt Fungicide (propiconazole), EPA Reg. No. 100-617, a triazole fungicide, Class II, Warning.

10. The registered labels for the pesticides used during the aerial application contain the following language:

*Quilt Xcel Fungicide:*

**"DIRECTIONS FOR USE ...** Do not apply this product in a way that will contact workers or other persons, either directly or through drift. ...

**ATTENTION ... DO NOT** spray when conditions favor drift beyond area intended for application. ...

**MIXING AND APPLICATION METHODS ...** Application Instructions ... Do not apply in a manner that will result in exposure to humans or animals."

*Baythroid XL:*

**"ENVIRONMENTAL HAZARDS ...** Do not apply when weather conditions favor drift from treated areas. ...

**Spray Drift Requirements ... Wind Direction and Speed:** Only apply this product if the wind direction favors on-target deposition.



**DIRECTIONS FOR USE ... Do not apply this product in a way that will contact workers or other persons, either directly or through drift. ...."**

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443(b)(3)

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

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(e) No pesticide shall be deposited within 100 feet of any residence;

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of One Thousand Eight Hundred Dollars (\$1,800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

- (b) Respondent's payment shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Eight Hundred Dollars (\$1,800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Eight Hundred Dollars (\$1,800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(d) and waives said right by consenting to the terms of this Agreement;
  - (ii) That Respondent further acknowledges that his failure to fulfill his Agreement to pay One Thousand Eight Hundred Dollars (\$1,800.00) as provided herein may subject him to collection procedures and/or further action being taken against him and/or his pesticide license, including, but not limited to, those described in N.C. Gen. Stat. §§ 143-456(16), 143-461(7), 143-469(c);
- (e) As further evidence of good faith and as consideration for this Agreement, Respondent agrees to sign and acknowledges that he has signed, before a Notary Public, a Confession of Judgment in the amount of One Thousand Eight Hundred Dollars (\$1,800.00) in favor of Complainant. Respondent further acknowledges and agrees that if Respondent fails to make any payment required under the terms of this Agreement, Complainant may institute an action in Wake County Superior Court, and file the Confession of Judgment, in order to obtain a judgment against him and recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
  - (i) Complainant hereby agrees that, so long as Respondent complies with the terms of this Agreement, Complainant will not institute any civil action against Respondent to collect the sum of money owed pursuant to this Agreement or file the Confession of Judgment Respondent has executed and provided to Complainant. Furthermore, Complainant agrees to file the Confession of Judgment only if Respondent fails to make a payment on time, pursuant to the terms of this Agreement, after giving Respondent notice of his failure to make said payment, and after allowing Respondent three (3) business days to cure his breach by paying the amount due in full;

- (ii) Complainant further agrees that, once Respondent has made his final payment and the Complainant has received One Thousand Eight Hundred Dollars (\$1,800.00) in satisfaction of the terms of this Agreement, Complainant shall provide to Respondent a document confirming receipt of payment and releasing Respondent from further liability under this Agreement. Complainant will also provide Respondent with the original Confession of Judgment, unless original Confession of Judgment has already been filed by reason of Respondent's breach of this Agreement.

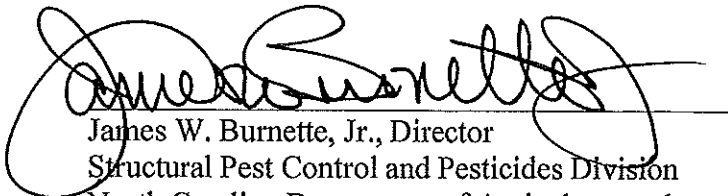
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



William D. Hall  
Crabbe Aviation  
1819 Nixonton Road  
Elizabeth City, North Carolina 27909

10/23/17  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/26/2017  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

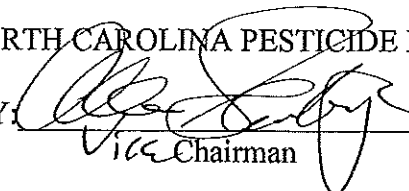
10/26/17  
Date

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APPROVED AND ORDERED FILED,

this the 14 day of November, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Vice Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

William D. Hall,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

William D. Hall, Respondent

Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-25A

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

MARK A. GREENE, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Mark A. Greene, Respondent.

1. At all times pertinent to this matter, Respondent was an employee and the responsible pesticide dealer for Southern States – Waco Service, located at Box 429, 2330 Cherryville Road, Waco, North Carolina 28169, and held Dealer License No. 037-3446.

2. On May 24, 2016, Complainant's Inspector, Charlie Jones conducted a routine Restricted Use Pesticide (RUP) sales inspection at Southern States in Waco, North Carolina. During the inspection, Complainant's Inspector reviewed the sales records and identified the purchase of Lambda-CY 1EC to Mr. J. Scott Ware under the commercial applicator license of Mr. Josh Beason (Applicator License No. 026-32248) on March 14, 2016.

3. Based on these findings, Complainant's Inspector contacted Mr. Beason and questioned him about the purchase and use of the pesticide purchased. Beason stated that he was an employee of Piedmont LLC and was not aware of any pesticide purchased under his license. He stated that he would send out a companywide email regarding this purchase and contact the Complainant's Inspector with any information he was able to obtain.

4. The following day, Mr. Beason contacted Complainant's Inspector and stated that Mr. Ryan Ware, the son of J. Scott Ware, purchased the product and applied it to Alfalfa for alfalfa weevils. At the time of the purchase and use, neither Mr. J. Scott Ware nor Mr. Ryan Ware possessed a license to purchase or use RUPs.

5. Based on the information provided by Mr. Beason, Complainant's Inspector contacted Mr. Ryan Ware and questioned him regarding his purchase of Lambda Cy. Mr. Ryan Ware stated that he was not aware he required a license to purchase Lambda Cy and he did not realize the clerk that he purchased the insecticide from sold it under Mr. Beason's license. Mr. Ryan Ware stated that he believed the mistake was made because he is part owner of Piedmont LLC and Mr. Beason is one of his employees.

6. Mr. Ryan Ware also informed Complainant's Inspector that he typically contracts with Southern States to commercially apply the Lambda Cy to his Alfalfa, but they would not be available for at least two weeks which is why he applied it himself. He confirmed that he applied 3.6 ounces per acre on his 75 acre tract and had no product remaining.

7. The dealer at Southern States – Waco who is responsible for the sale of the RUP to Mr. Ware, an uncertified applicator, is Respondent.

8. The following pesticide was involved:

Willowood Lambda-CY1 EC, Lambda-cyhalothrin, EPA Reg. No. 87290-24, Class II Warning

9. The Label Statement for the pesticide involved reads:

**RESTRICTED USE PESTICIDE**

"For retail sale to and use only by certified applicators...."

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-451(a)(3), (5) and (13)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

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It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Board as follows:

N.C.G.S. 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.



- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

13. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

14. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Mark A. Greene

Mark A. Greene  
Southern States – Waco Service  
Box 429, 2330 Cherryville Road  
Waco, North Carolina 28169

6-19-2017

Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services

1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

6-29-2017

Date

Chi Mye

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/27/17

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14 day of NOVEMBER, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY: [Signature]

Vice Chairman



2016-25

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Mark A. Green

**Respondent,**

Supplemental Information

Settlement conference was held with Mark Green. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-25B

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
 )  
Complainant, )  
 )  
v. )  
 )  
RYAN S. WARE, )  
 )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Ryan S. Ware, Respondent.

1. At all times pertinent to this matter, Respondent was an unlicensed applicator and resided at 3423 West Zion Church Road in Shelby, North Carolina 28150.
2. On May 24, 2016, Complainant's Inspector, Charlie Jones conducted a routine Restricted Use Pesticide (RUP) sales inspection at Southern States in Waco, North Carolina. During the inspection, Complainant's Inspector reviewed the sales records and identified the purchase of Lambda-CY 1EC to Mr. J. Scott Ware under the commercial applicator license of Mr. Josh Beason (Applicator License No. 026-32248) on March 14, 2016.
3. Based on these findings, Complainant's Inspector contacted Mr. Beason and questioned him about the purchase and use of the pesticide. Mr. Beason stated that he was an employee of Piedmont LLC and was not aware of any pesticide purchased under his license. He stated that he would send out a companywide email regarding this purchase and contact the Complainant's Inspector with any information he was able to obtain.
4. The following day, Mr. Beason contacted Complainant's Inspector and stated that Respondent, Ryan Ware, the son of J. Scott Ware, purchased the product with Mr. Beason's license and applied it to Alfalfa for alfalfa weevils. At the time of the purchase and use, neither Mr. J. Scott Ware nor Respondent possessed a license to purchase or use RUPs.

5. Based on the information provided by Mr. Beason, Complainant's Inspector contacted Respondent and questioned him regarding his purchase of Lambda Cy. Respondent stated that he was not aware he required a license to purchase Lambda Cy and he did not realize the clerk that he purchased the insecticide from sold it under Mr. Beason's license. Respondent stated that he believed the mistake was made because he is part owner of Piedmont LLC and Mr. Beason is one of his employees.

6. Respondent also informed Complainant's Inspector that he typically contracts with Southern States to commercially apply the Lambda Cy to his Alfalfa, but they would not be available for at least two weeks which is why he applied it himself. He confirmed that he applied 3.6 ounces per acre on his 75 acre tract and had no product remaining.

7. The dealer at Southern States -- Waco who is responsible for the sale of the RUP to Respondent, an uncertified applicator, is Mark A. Greene.

8. The following pesticide was involved:

Willowood Lambda-CY1 EC, Lambda-cyhalothrin, EPA Reg. No. 87290-24, Class II Warning

9. The Label Statement for the pesticide involved reads:

RESTRICTED USE PESTICIDE

"For retail sale to and use only by certified applicators...."

10. Following this investigation, Respondent obtained private pesticide applicator certificate 38-86791 effective June 30, 2016.

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443 (b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456(a)(2), (4), (5) and (15)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

Failed to pay the original or renewal license fee when due and continued to operate as applicator, or applied pesticides without a license.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Fifty Dollars (\$650.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Fifty Dollars (\$650.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Fifty Dollars (\$650.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

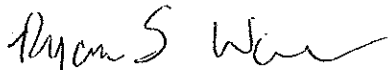
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

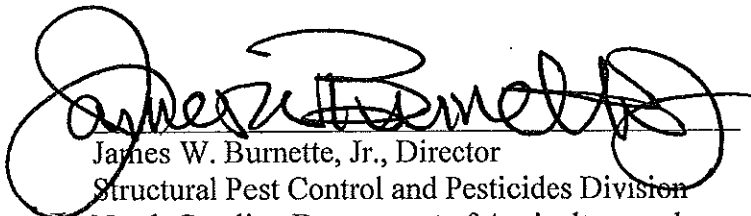
15. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

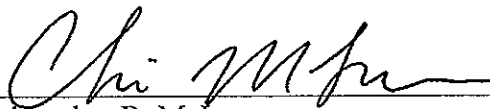
BY CONSENT:

  
\_\_\_\_\_  
Ryan S. Ware  
3423 West Zion Church Road  
Shelby, North Carolina 28150

6/22/17  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

June 29, 2017  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

<sup>cam</sup>  
6/29/17  
\_\_\_\_\_  
Date

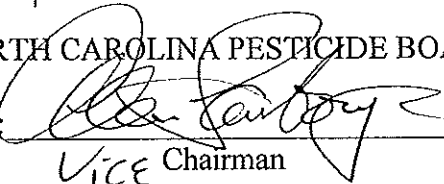
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APPROVED AND ORDERED FILED,

this the 14 day of November, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
\_\_\_\_\_  
VICE Chairman





2016-25

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Ryan S. Ware

**Respondent,**

Supplemental Information

Settlement conference was held with Ryan Ware. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-27

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
JOSEPH EDWARD LANIER, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Joseph Edward Lanier, Respondent.

1. At all times pertinent to this matter, Respondent was the pesticide applicator and responsible licensee (Applicator License No. 038-59674) for the target soybean field at issue and resides at 107 Newt Gresham Lane, Beulaville, North Carolina 28518.
2. On June 1, 2016, Complainant's Inspector, S. Jimmy Merritt, investigated a pesticide drift complaint from Mr. Bryson Thomas of Thomas Vineyards in Duplin County, North Carolina based upon a pesticide application to a soybean field across from Mr. Thomas' vineyard that caused herbicide injury to his grapevines.
3. At the time of Complainant's Inspector's interview with Mr. Thomas, Mr. Thomas reported that on May 25, 2016, he noted what he believed to be 2, 4-D damage to his grapevine. Mr. Thomas also reported that the sod field across from his property was owned by Mr. Paul Smith. The soybean fields behind Mr. Smith's sod field are owned by Respondent, Mr. Joseph Lanier.
4. On June 1, 2016, based on the information provided by Mr. Thomas, Complainant's Inspector contacted Mr. Smith to discuss any recent pesticide applications performed on his sod field. During his conversation with Mr. Smith, Complainant's Inspector learned that Mr. Smith and Mr. Ben Whaley are co-owners of Sandy Plain Sod Farm and that the sod fields under their care was treated on April 12, 2016 with Atrazine 4L.

5. During further investigation of the Mr. Thomas' vineyard, Complainant's Inspector noted yellowing and leaf curling over the entire vineyard with noticeably more symptoms near N.C. 111 Highway. Respondent's soybean field is located approximately 1,350 ft. from Mr. Thomas' vineyard.

6. Based on Complainant's Inspector's investigative findings, he interviewed Respondent regarding his property located directly behind the Sandy Plain Sod Farm. During this interview, Respondent stated that, prior to planting his soybean fields, he performed a burndown application of Roundup PowerMax II and Weedar 64 on May 11, 2016.

7. Based on the information provided during the interviews conducted, Complainant's Inspector obtained soil and vegetation samples of the target and non-target areas. Laboratory analysis of the samples collected by the inspector revealed the following:

		<u>Glyphosate</u>	<u>AMPA</u>	<u>2,4-D</u>	<u>Atrazine</u>
JM-29	Non-target grape vegetation, Thomas vineyard 16 <sup>th</sup> row.	ND	ND	ND	ND
JM-30	Non-target grape vegetation, Thomas vineyard 8 <sup>th</sup> row.	ND	ND	ND	ND
JM-31	Non-target grape vegetation, Thomas vineyard 1 <sup>st</sup> row.	ND	ND	0.016 ppm	ND
JM-32	Non-target weed vegetation, Thomas vineyard 1 <sup>st</sup> row.	9.47 ppm	ND	ND	ND
JM-33	Non-target crabgrass vegetation, Smith sod farm	ND	ND	ND	ND
JM-34	Non-target soil, Smith sod farm	ND	0.472 ppm	ND	ND
JM-35	Non-target crabgrass vegetation, Smith sod farm	ND	ND	ND	ND
JM-36	Target weed vegetation, Lanier soybean field	2.46 ppm	ND	13.9 ppm	ND
JM-37	Target soil, Lanier soybean field	ND	0.272 ppm	ND	ND

8. Complainant's Inspector determined the following pesticides were involved:

Weedar 64 Herbicide (2,4-D), EPA Reg. No. 71368-1, a Chlorinated phenoxy broadleaf herbicide, Class 1, Danger.

9. The label statements obtained by Complainant's Inspector read as follows:

*Weedar 64 Herbicide:*

**"Environmental Hazards ...** Do not apply this product directly to, or permit to drift onto cotton ... or other desirable crop or ornamental plants which are susceptible to 2,4-D herbicide. Do not apply near susceptible plants since very small quantities of the 2,4-D will cause severe injury during the growing or dormant periods. ... **DIRECTIONS FOR USE ... SPRAY DRIFT MANAGEMENT ...**  
**Wind Speed ...** Only apply this product if the wind direction favors on-target deposition ... **SUSCEPTIBLE PLANTS ...** Do not apply under circumstances where spray drift may occur to ... other plantings that might be damaged or crops thereof rendered unfit for sale, use or consumption. Susceptible crops include ... grapes (in growing stage) ...."

10. During the investigation, Complainant's Inspector consulted Dr. Alan York and Mr. Wayne Mitchem and requested they review the photographs Complainant's Inspector took of the vegetation damage at issue and both provided their opinions:

Dr. Alan York looked at the photographs in this case and stated, "Grapevines in the pictures are expressing symptoms not unlike what I would expect from an auxin herbicide, such as 2,4-D."

Mr. Wayne Mitchem looked at the photographs in this case and stated, "In looking at the photos the symptomology is consistent with what I would expect to see from 2,4-D. ... In my opinion it is 2,4-D damage."

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Joseph Edward Lanier  
Joseph Edward Lanier  
107 Newt Gresham Lane  
Beulaville, North Carolina 28518

6-22-17  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

July 6, 2017  
Date

Christopher R. McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

7/6/17  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY Alvin S. [Signature]  
Vice Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Joseph Edward Lanier,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Joseph Edward Lanier, Respondent  
Patrick N. Farquhar, Eastern Field Manager





STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-34

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JAMES W. CAUDLE,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and James W. Caudle, Respondent.

1. At all times pertinent to this matter, Respondent was the pesticide applicator and responsible licensee (Applicator License No. 038-81106) for Caudle Farms LLC, 2422 Old Peachland Road, Peachland, North Carolina 28133.
2. On June 21, 2016, North Carolina Pesticide Inspectors Charlie Jones and Eric Ball investigated a complaint by Ms. Edna N. Biddix of 5410 Horne Road in Marshville, North Carolina regarding possible pesticide drift damage that resulted from a pesticide application to a soybean field adjacent to her property on June 18, 2016.
3. During Ms. Biddix's interview, Complainant's Inspectors observed damage consistent with paraquat exposure throughout her garden. At that time, Ms. Biddix reported that the pesticide application was performed on a soybean field adjacent to her property that is farmed by Respondent, James W. Caudle of Caudle Farms.
4. Based on these allegations, Complainant's Inspectors interviewed Respondent to discuss the pesticide application to the soybean field adjacent to Ms. Biddix's property. Respondent agreed that the application caused pesticide damage to Ms. Biddix's garden. He stated that the applicator, Travis Parker, was an employee of Caudle Farms LLC and that Mr. Parker applied Gramoxone and Envive as a burndown mixture to prepare the soybean field for planting.

5. Based on the information provided during the interviews conducted, Complainant's Inspectors took photographs of the damaged produce and obtained soil and vegetation samples of the target and non-target areas. Laboratory analysis of the samples collected by the inspectors revealed the following:

Sample No	Type	Type	Location	Paraquat
CJ-16	Veg	Non-target	Corn leaves	BQL<1.0ppm
CJ-17	Soil	Non-target	Garden soil	ND
CJ-18	Soil	Target	Soybean field	8.41ppm

6. Complainant's Inspectors determined the following pesticides were involved:

Gramoxone (Paraquat), EPA Reg No.100-1431, Class I, Danger.

Envive (Chlorimuron ethyl, Flumioxazin, Thifensulfuron methyl), EPA Reg No 352-756, Class III, Caution.

7. The label statements obtained by Complainant's Inspectors read as follows:

*Gramoxone Label states:*

"Do not apply under conditions involving possible drift to food, forage or other plantings that might be damaged thereof rendered unfit for sale, use or consumption. Do not apply when weather conditions favor drift from the treated areas."

*Envive Label states:*

"Prevent drift of spray to desirable plants. . . . Avoiding spray drift is the responsibility of the applicator."

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456 (a) (2) (4) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

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- (a) That Respondent agrees to pay the sum of Seven Hundred Dollars (\$700.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Seven Hundred Dollars (\$700.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Seven Hundred Dollars (\$700.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement.

- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

11. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

12. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

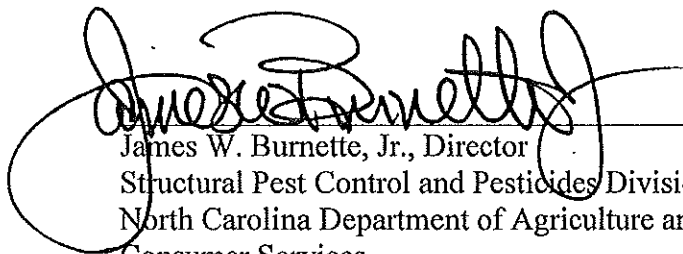
BY CONSENT:



James W. Caudle  
Caudle Farms LLC  
2422 Old Peachland Road  
Peachland, North Carolina 28133

9-21-17

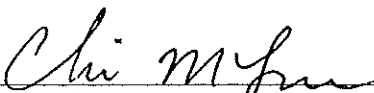
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/2/2017

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

10/2/17

Date

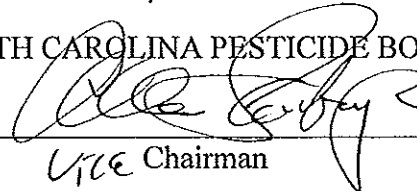
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Vice Chairman



2016-34

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

James W. Caudle

**Respondent,**

Supplemental Information

Settlement conference was held with James W.Caudle. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-039

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

WILLIAM A. (MARK) TYNDALL, JR., )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and William A. (Mark) Tyndall, Jr. Respondent.

1. At all times pertinent to this matter, Respondent was the licensed pesticide dealer (Pesticide Dealer License No. 037-4012) and responsible licensee for Crop Production Services located at 345 Pugh Road, Clinton, North Carolina 28328.
2. On June 27, 2016, Complainant's Inspector, S. Jimmy Merritt, met with Mr. Mike Long at his residence in Rose Hill, North Carolina. Mr. Long alleged drift damage to his vineyard as a result from a pesticide application made to the adjacent soybean field by Mr. Samuel Boney, Jr.
3. Based on these allegations, Inspector Merritt met with Mr. Boney, Jr. on June 27, 2016, to discuss the treatment and dates he provided to his soybean field. During the interview, Inspector Merritt observed a 30-gallon drum containing Makaze Herbicide labeling. However, Mr. Boney indicated that the 30-gallon drum contained Gramoxone SL 2.0. Mr. Boney further indicated that he had purchased 15 gallons of bulk Gramoxone SL 2.0 in the 30-gallon drum from Respondent at Crop Production Services in Clinton, North Carolina. Mr. Boney indicated that, at the time of purchase, he was aware that he was being sold a refilled drum that contained Gramoxone SL 2.0, but he could not explain what had happened to the label.
4. On June 28, 2016, Complainant's Inspector met with Respondent at Crop Production Services in Clinton, North Carolina. Upon the inspection, Respondent was able to provide a record for the sale of the 15 gallons of Gramoxone SL 2.0 to Respondent on April 28, 2016. However,



there was no entry of the sale on the refillable container log. At this time, Respondent stated the drum should not have been refilled as it appeared at the time of Complainant's inspection. Respondent further stated that his warehouseman, Mr. Michael Hunter, refills bulk pesticide containers, but he was not working that day.

5. On July 6, 2016, Complainant's Inspector and Investigative Specialist Ward discussed with Respondent and Mr. Hunter that refiling the Makaze labeled drum with Gramoxone SL 2.0 caused it to be misbranded.

6. During his investigation, Complainant's Inspector took a sample of the pesticide in the 30-gallon drum possessed by Mr. Boney. Laboratory analysis of the samples collected by the inspector revealed the following:

		<u>Paraquat</u>	<u>Thifensulfuron</u> <u>-methyl</u>	<u>Chlorimuron</u> <u>-ethyl</u>	<u>Flumioxazin</u>
JM-47	Tank mix soil, Boney Makaze drum	30163 ppm	ND	ND	ND

7. Based upon the investigation and laboratory results, the pesticide at issue is:

Gramoxone SL 2.0 Herbicide (paraquat), EPA Reg. No. 100-1431, a postemergence, nonselective herbicide, Class I, Danger-Poison.

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-441

(b) No person shall handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with pesticides, or in any manner contrary to the regulations of the Board.

N.C.G.S. §143-443

(a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(5) Any pesticide which is adulterated or misbranded, (or any device which is misbranded).

N.C.G.S. §143-451

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide dealer license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-450

(b) Each pesticide dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use or application of pesticides.

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(d) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(d) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

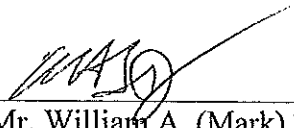
11. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

12. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

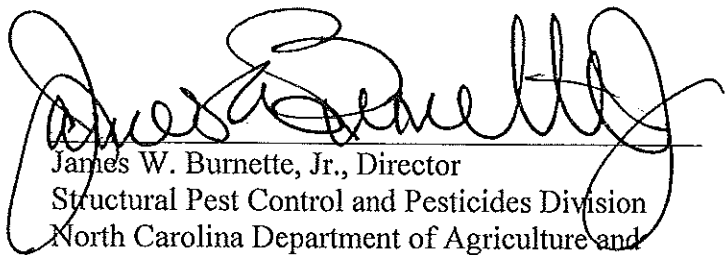
13. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

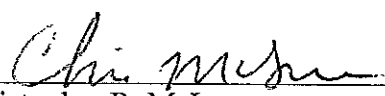
BY CONSENT:

  
Mr. William A. (Mark) Tyndall, Jr.  
Crop Production Services/License No. 037-4012  
345 Pugh Road  
Clinton, North Carolina 28328

8-9-17  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/25/2017  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

10/23/17  
Date

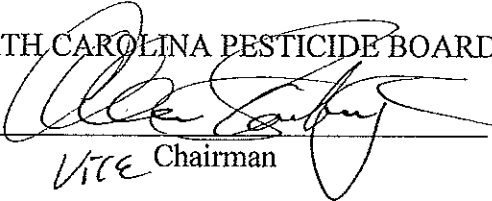
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2017

NORTH CAROLINA PESTICIDE BOARD

BY:

  
VICE Chairman



2016-039

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

William A. Tyndall, Jr.,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA

COUNTY OF LEE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD

File No. IR2016-056

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JAMES CLYDE GARNER

Respondents.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and James Clyde Garner, Respondent.

1. On July 26, 2016, Complainant's Inspector Doug Bullard investigated a complaint regarding an application of pesticides made around and in the areas of Lake Willitt by Respondent.
2. On July 28, 2016, Mr. Henry McCurry showed Complainant's Inspector the alleged areas of application around Willett's Lake that he was concerned about.
3. On July 28, 2016, Complainant's Inspector gained verbal permission over the telephone from Respondent to enter his shop and photograph the sprayer and pesticide he had used to treat the lake and shore area around the lake. Respondent was not available that day to meet him.
4. On August 1, 2016, Complainant's Inspector met with Respondent at his home. Respondent stated the applications to the lake began on July 22, 2016, and were last applied on July 26, 2016. He used the rate of 1 gallon of Reglone per 50 gallons of water. Respondent used a hand gun sprayer to make the application as he was treating the water lilies in the pond.
5. Respondent stated his son-in-law, Mr. Timothy Luther Thomas, was able to purchase the Reglone for him to use since he was a licensed private pesticide applicator (Certification No. 038-77306).

6. In speaking with Mr. Thomas over the telephone on August 2, 2016, he stated the Reglone was purchased at Crop Production Services, ("CPS"), in Sanford at the advice of Mr. Charles V. McLeod.

7. On August 4, 2016, Complainant's Inspector phoned Mr. Charles McLeod at CPS. Mr. McLeod explained how Mr. Thomas and Respondent requested to purchase Reward in a 2.5 gallon container; however, CPS did not have this container in that size. Instead, Mr. McLeod sold them another pesticide that contained the same active ingredient and percentage, named Reglone, but which was not labeled for use in water. Mr. McLeod stated he did not instruct Respondent or Mr. Thomas to not use Reglone in an aquatic situation and that he did not know their intentions.

8. Based on the information provided during the interviews conducted, Complainant's Inspector obtained aquatic vegetation and sediment samples of the target area. Laboratory analysis of the samples collected by the inspector revealed the following:

Sample No	Type	Location	Diquat dibromide
DB-48	Veg	Lake aquatic vegetation	10.5ppm
DB-49	soil	Sediment from lake	4.89ppm

9. Complainant's Inspector determined the following pesticides were involved:

Regalone Dessicant (Diquat dibromide), EPA Reg. No. 100-1061, Class III Caution.

10. The labelling statement on Regalone Dessicant read as follows::

"This pesticide is toxic to aquatic invertebrates. For Terrestrial Uses, Do not apply directly to water..."

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license or certificate and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is



necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

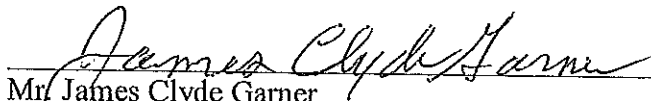
14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

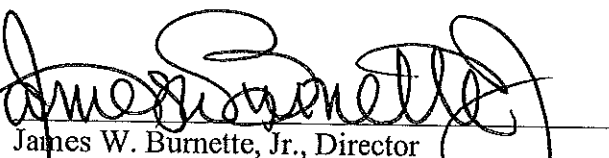
16. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

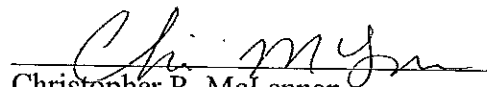
BY CONSENT:

  
Mr. James Clyde Garner  
5035 Lake Willett Road  
Sanford, North Carolina 27332

10-6-17  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/16/2017  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

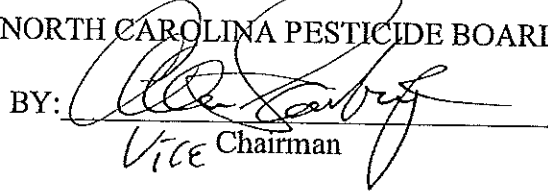
10/12/2017  
Date

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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2017

NORTH CAROLINA PESTICIDE BOARD

BY:   
Vice Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

James Clyde Garner

**Respondent,**

Supplemental Information

Settlement conference was held with James Clyde Garner. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-63

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
TYLER ALLEN, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Tyler Allen, Respondent.

1. At all times pertinent to this matter, Respondent was the licensed pesticide applicator and responsible licensee (Commercial Pesticide Applicator License No. 026-29790) for NaturChem, Inc., 1029 Brompton Lane, Greenville, North Carolina 27834.
2. On August 11, 2016, Complainant's Inspector, Steven Gatton, received a complaint by Mr. Claude Angell of Angell Farms, located at 806 Ashley Loop Road in Eden, North Carolina regarding possible herbicide drift damage to a tobacco field he owns, which is under contract as organically grown. Mr. Angell stated that, after an herbicide application to the right of way near his fields on July 30, 2016, he began noticing damage to his tobacco on July 6, 2016. Additionally, Mr. Angell was concerned that he would be unable to sell his tobacco or grow tobacco in the damaged fields for several years because he is under contract to grow his tobacco organically.
3. During the interview, Mr. Angell informed Complainant's Inspector that the Duke Power right of way adjacent to his tobacco field was treated by NaturChem. Complainant's Inspector confirmed that NaturChem used the Aquimix Custom Blended product which consists of four herbicides: Milestone Specialty Herbicide, Escort XP, Rodeo and Polaris. The right of way is measured at 93 feet.

4. Mr. Daniel Andrews was the crew leader from NaturChem, Inc. that performed the application to the right of way while acting under the supervision of Respondent, Tyler Allen, the certified license holder for NaturChem, Inc. Respondent confirmed that a spray rig using a brush gun was used to perform the pesticide application at issue.

5. Based on the information provided during the investigation, Complainant's Inspector obtained several soil and vegetation samples of the right of way and non-target tobacco field. Laboratory analysis of the samples collected by the inspector revealed the following:

Sample No	Type	Type	Location	Amino-pyralid	Imazapyr	Metsulfuron Methyl	Glyphosate
SG-23	Tobacco leaves	NonTarget	1 ft from ROW	ND	ND	ND	ND
SG-24	Soil	NonTarget	Same	ND	ND	ND	ND
SG-25	Tobacco leaves	NonTarget	32 ft from ROW	ND	ND	ND	ND
SG-26	Soil	NonTarget	Same	ND	ND	ND	ND
SG-27	Tobacco leaves	NonTarget	49 ft from ROW	ND	ND	ND	ND
SG-28	Sweetgum	Target	Target	3.34ppm	17ppm	.075ppm	17.0ppm
SG-29	Soil	Target	Target	2.57ppb	.012ppm	ND	ND

- AMPA was detected in SG 28 and 29

6. The following pesticides were identified in the samples obtained by Complainant's Inspector during the investigation:

Escort XP, Metsulfuron methyl, EPA Reg. No. 432-1549, Class III Caution

Polaris Herbicide, Isopropylamine salt of Imazapyr, EPA Reg. No. 228-534, Class III Caution

Rodeo, Glyphosate, EPA Reg. No. 62719-324, Class III Caution

Milestone Specialty Herbicide, Triisopropanolammonium salt of 2-pyridinecarboxylic acid, 4-amino-3,6-dichloro, EPA Reg. No. 62719-519, Class III Caution

7. The label statements obtained by the inspector read as follows:

*Milestone Specialty Herbicide:*

"MILESTONE is highly active against broadleaf plants. Do not use this product on areas where loss of broadleaf plants, including legumes, that cannot be tolerated."

8. In addition to the soil and vegetation samples obtained, Complainant's Inspector took photographs of the damaged tobacco and consulted Dr. Alan York. Dr. York sought additional analysis from Dr. Loren Fisher and Dr. Mathew Vann, North Carolina State University Tobacco Specialists. They concluded that the damage to the tobacco field was a result of aminopyralid exposure at a minute rate.

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456 (a) (2) (4) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Seven Hundred Fifty Dollars (\$750.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Seven Hundred Fifty Dollars (\$750.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Seven Hundred Fifty Dollars (\$750.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.
- (iii) Respondent agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

12. Respondent further agrees to register with Fieldwatch within thirty (30) days of the Board's approval of this Agreement.


13. Respondent further agrees to conduct a forty five (45) minute training on herbicide drift and volatilization for NaturChem employees. This training will be held in Greenville, North Carolina and must be conducted within sixty (60) days of the Board's approval of this Agreement. Respondent is to advise Complainant's employee Dwight Seal, Wester District Manager, in writing of the date and location that this training will be conducted within thirty (30) days of the Board's approval of this Agreement.

14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

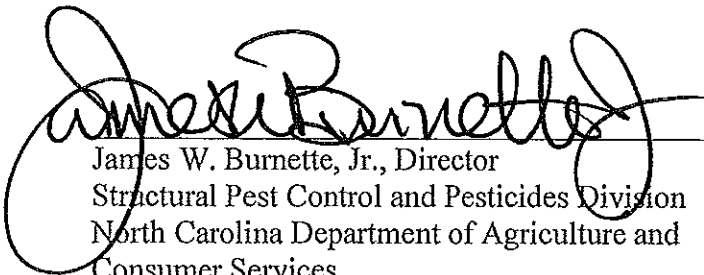
15. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

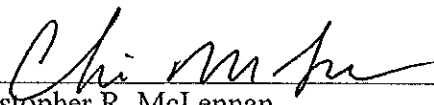
BY CONSENT:

  
\_\_\_\_\_  
Tyler Allen  
NaturChem, Inc.  
1029 Brompton Lane  
Greenville, North Carolina 27834

6-21-17  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

June 29, 2017  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

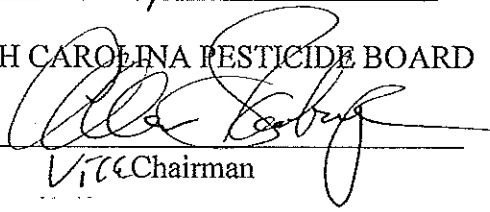
6/29/17  
\_\_\_\_\_  
Date

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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Vice Chairman





2016-63

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Tyler Allen

**Respondent,**

Supplemental Information

Settlement conference was held with Tyler Allen. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-64

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

ROBERT RATLIFF,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Robert Ratliff, Respondent.

1. At all times pertinent to this matter, Respondent was the licensed pesticide applicator (License No. 038-86478) for Frank Howey Family Farms, Post Office Box 429 in Monroe, North Carolina 28111.
2. On August 16, 2016, Complainant's Pesticides Inspector, Steven Gatton, investigated pesticide drift complaints by three Union County farms, specifically Smith Brothers Farm in Wingate, HTH Farms in Marshville and Williams Brothers Farm in Monroe, which resulted from pesticide applications of Dicamba on Duo Extend soybeans, thereby causing herbicide damage to the adjacent fields of non-resistant soybeans owned by the complaining farmers. All complaining farms were located adjacent to farms owned and operated by Frank Howey Family Farms.
3. That same day, Complainant's Inspector interviewed Grady L. Smith of Smith Brothers Farm, located at 2909 Faulks Church Road in Wingate regarding the damage to his soybean fields. Mr. Smith reported that Mr. Howey of Frank Howey Family Farms planted Roundup Ready 2 Xtend Soybeans in adjacent fields and Mr. Smith's non-tolerate soybeans experienced drift damage from the dicamba application performed on Mr. Howey's soybeans by Respondent. Mr. Smith stated that, following the application of dicamba, Mr. Howey contacted him and instructed him to maintain a record of his soybean yield from the fields near Mr. Smith's damaged fields and that Mr. Howey would compensate him for the difference in yield.

4. Following his interview with Mr. Smith, Complainant's Inspector visited the soybean fields of Williams Brothers Farm on Old Pageland Monroe Road in Monroe to inspect the drift damage to Mr. Williams' fields. During this inspection, Complainant's Inspector noted that the top soybean leaves were cupped and had a leathery texture. He also noted that the plant's growth appeared to be stunted. Complainant's Inspector documented that all plants in Mr. Williams' field appeared to be affected, while no adverse effect was visible on the adjacent soybean field owned by Mr. Howey.

5. Complainant's Inspector reported the same adverse effects to Mr. Smith's soybean field that he noted during the inspection of Mr. Williams' field. Mr. Smith's plants were approximately four feet tall and the top leaves showed visible damage, although not to the extent of Mr. Williams' soybeans. Complainant's Inspector also noted that Mr. Howey's field, adjacent to Mr. Smith's field, displayed no adverse effect or damage.

6. Mr. Williams also informed Complainant's Inspector that Respondent contacted him and confirmed that he made an application of dicamba on June 20, 2016 to Mr. Howey's adjacent field that may have resulted in drift damage to Mr. Williams' soybeans. Similar to the arrangement offered to Mr. Smith, Respondent confirmed that Mr. Howey would compensate Mr. Williams for any resulting damage or loss in yield.

7. Following the inspection of the Smith and Williams Brothers' soybean fields, Complainant's Inspector met with Mr. Richard Tucker, the owner of HTH Farms located at 4401 Smithtown Road in Marshville. Mr. Tucker reported similar damage to his soybean field located on Philadelphia Church Road that Mr. Smith and Mr. Williams reported following the application of dicamba on the corn field adjacent to Mr. Tucker's field. This corn field was owned and maintained by Frank Howey Family Farms.

8. Based on the information provided during the interviews conducted, Complainant's Inspector obtained vegetation samples of the target and non-target areas. Laboratory analysis of the samples collected by the inspector revealed the following:

Sample No	Type	Type	Location	dicamba	diflufenzopyr
SG-6	Veg	Nontarget	Soybean Williams MtSpgCh.Rd	ND	ND
SG-7	Soil	Nontarget	Soybean Williams MtSpgCh.Rd	ND	ND
SG-8	Veg	Nontarget	Soybean Williams Farm	ND	ND
SG-9	Soil	Nontarget	Soybean Williams Farm	ND	ND
SG-10	Veg	Nontarget	Soybean Smith Bro Farm	ND	ND
SG-11	Veg	Nontarget	Soybean Smith Bro Farm	ND	ND
SG-12	Soil	Nontarget	Williams Bro farm	ND	ND
SG-13	Veg	Nontarget	Soybean HTH Farm Autry Rd	ND	ND
SG-14	Soil	Nontarget	Soybean HTH Farm Autry Rd	ND	ND
SG-15	Veg	Target	Howey Farm Corn leaves Phily	0.008ppm	ND
SG-16	Soil	Target	Howey Farm Corn leaves Phily	0.280ppm	0.008
SG-17	Veg	Target	Howey Corn Stack Rd	ND	ND
SG-18	Soil	Target	Howey Corn Stack Rd	ND	BQL<.005ppm
SG-19	Veg	Target	Howey Soybean Mt Spg Rd	ND	ND
SG-20	Soil	Target	Howey Soybean Mt Spg Rd	BQL<0.10ppm	ND
SG-21	Veg	Target	Howey Soybean gravel Rd	0.012ppm	ND
SG-22	Soil	Target	Howey Soybean gravel Rd	0.185ppm	ND

9. Complainant's Inspector determined the following pesticides were involved:

Dicamba 4 DMA, Dimethylamine salt of dicamba, EPA Reg. No. 83520-10, Class II, Warning.

Status Herbicide, Sodium Salt of diflufenzopyr and Sodium salt of dicamba, EPA Reg. No. 7969-242, Class III, Caution.

10. The label statements obtained by Complainant's Inspector read as follows:

"Do Not spray when conditions favor drift beyond area intended for application."

DICAMBA 4 DMA may cause injury to desirable trees and plants, particularly beans, cotton, flowers, fruit trees, grapes, ornamentals, peas, potatoes, soybeans, sunflowers, tobacco, tomatoes, and other broadleaf plants when contacting their roots, stems or foliage. These plants are most sensitive to DICAMBA 4 DMA during their development or growing stage. FOLLOW THE PRECAUTIONS LISTED BELOW WHEN USING DICAMBA 4 DMA.

- Do not treat areas where either possible downward movement into the soil or surface washing may cause contact of DICAMBA 4 DMA with the roots of desirable plants such as trees and shrubs.
- Avoid making applications when air currents may carry spray particles to areas where sensitive crops and plants are growing, or when temperature inversions exist. Do not spray near sensitive plants if wind is gusty or in excess of 5 mph and moving in the direction of adjacent sensitive crops. Leave an adequate buffer zone between area to be treated and sensitive plants. Coarse sprays are less likely to drift out of the target area than fine sprays.
- Use coarse sprays to avoid potential herbicide drift. Select nozzles, which are designed to produce minimal amounts of fine spray particles. Examples of nozzles designed to produce coarse sprays via ground application are Delavan Rain-drops, Spraying Systems XR flat fans, or large capacity flood nozzles such as D10, TK10, or greater capacity tips. Keep the spray pressure at or below 20 psi and the spray volume at or above 20 GPA, unless otherwise required by the manufacturer of drift-reducing nozzles. Consult your spray nozzle supplier concerning the choice of drift reducing nozzles.
- Agriculturally approved drift-reducing additives may be used.
- Do not apply DICAMBA 4 DMA adjacent to sensitive crops when the temperature on the day of application is expected to exceed 85°F as drift is more likely to occur.

- To avoid injury to desirable plants, equipment used to apply DICAMBA 4 DMA should be thoroughly cleaned (See PROCEDURE FOR CLEANING SPRAY EQUIPMENT) before reusing to apply any other chemicals.

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456 (a) (2) (4) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

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No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143.440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

16. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Robert Ratliff  
Robert Ratliff  
Frank Howey Family Farms  
Post Office Box 429  
Monroe, North Carolina 28111

9/1/17  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

9/15/2017  
Date

Christopher R. McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

9/18/17  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY:

[Signature]  
Vice Chairman





2016-64

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Robert Ratliff

**Respondent,**

Supplemental Information

Settlement conference was held with Frank Howey and Robert Ratliff. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-067

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

BRIAN FISHER, )

Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Brian Fisher, Respondent.

1. At all times pertinent to this matter, Respondent maintained North Carolina Aerial Pesticide Applicator (Pilot) License No. 027-799.

2. On August 22, 2016, Complainant's Inspector investigated a complaint from Mr. Bill Ashburn concerning drift from an aerial application to an adjacent soybean field that had damaged his pine trees in Elizabeth City, Pasquotank County, North Carolina.

3. On August 22, 2016, Complainant's Inspector and the Pasquotank County extension agent, Mr. Al Wood, met with Mr. Ashburn at the site and immediately noticed the tops of the 50-60 feet tall pine trees were brown and that the pine plantation appeared to have received some drift from an aerial herbicide application to the adjacent soybean field owned by Ferebee Farms.

4. On August 31, 2016, Complainant's Inspector took photographs and samples from the site. Four samples were taken: two from Mr. Ashburn's pine tree area (non-target) and two from the target area on Ferebee Farms.

5. Mr. Ashburn stated he had applied glyphosate to his paths and roads with a 15 gallon atv sprayer in the spring but did not know the exact date, or which generic glyphosate he used. He stated he followed the labeled rates and that the sprayer is about 20psi with 3tips close to the ground.

6. The owner of Ferebee Farms is Joel Ferebee, who confirmed that he had hired Crabbe Aviation to make the application in question to his soybean field. The aerial pesticide applicator for the application was Respondent.

7. Complainant's Inspector met with Respondent, of Crabbe Aviation, at which time Respondent admitted spraying the Ferebee Farms soybean field on July 5, 2016. Respondent provided a copy of the spray record, which indicated he used 64oz of Flexstar GT at 3.5 per acre. Respondent further stated he did not notice any wind on that day of the application and that, if drift occurred, it was not intentional.

8. Based upon the information provided during the investigation, the following pesticides were identified as being involved:

Flexstar GT 3.5 EPA reg. No.100-1385 Sodium Salt of Fomesafen 5.88%  
Glyphosate 22.40%, Class III Caution

9. The labeling statements for the pesticide involved, read as follows

#### **Drift Management**

Avoiding spray drift at the application site is the responsibility of the applicator and the grower. The interaction of many equipment and weather-related factors determines the potential for spray drift. The applicator and grower must consider the interaction of equipment and weather-related factors to ensure that the potential for drift to sensitive nontarget plants is minimal.

This pesticide is to be applied only when the potential for drift to adjacent sensitive areas (e.g., residential areas, bodies of water, nontarget plants) is minimal (i.e., when the wind is blowing away from the sensitive area).

#### **Sensitive Areas**

The pesticide is to be applied only when the potential for drift to adjacent sensitive areas (e.g., residential areas, bodies of water, known habitat for threatened or endangered species, nontarget crops) is minimal (i.e., when wind is blowing away from the sensitive areas).

10. Laboratory analysis of the samples collected by the Complainant's Inspector revealed the following:

Sample No	Type	Location	Fomesafen	Glyphosate	AMPA
CH-37	Nontarget	Ashburn veg	0.038ppm	1.45ppm	ND
CH-38	Nontarget	Ashburn soil	0.058ppm	ND	BQL<.250ppm
CH-39	Target	Ferebee veg	ND	ND	ND
CH-40	Target	Ferebee soil	0.080	ND	0.837ppm

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1005

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

(b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

16. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

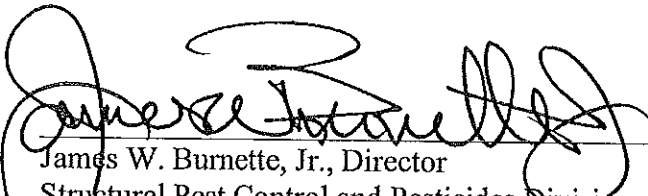
BY CONSENT:



Mr. Brian Fisher  
Crabbe Aviation  
3180 State Route 314  
Fredricktown, OH 43019

9-5-17

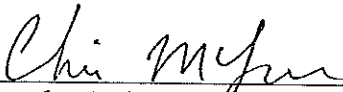
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

9-18-2017

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

9/18/17

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2017

NORTH CAROLINA PESTICIDE BOARD

BY:   
Vice Chairman



2016-67

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Brian Fisher

**Respondent,**

Supplemental Information

Settlement conference was held with Brian Fisher. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-71A

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
VANCE G. McRAE, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Vance G. McRae, Respondent.

1. At all times pertinent to this matter, Respondent was a salesman and responsible certified dealer for Coastal AgroBusiness Corporation, located at 294 Main Street, Fair Bluff, North Carolina 28439, and held North Carolina Pesticide Dealer License No. 037-4083.
2. On August 23, 2016, Complainant's Pesticide Inspector, S. Jimmy Merritt conducted a routine Restricted Use Pesticide (RUP) Sales Records Inspection of Coastal AgroBusiness Corp. in Fair Bluff, North Carolina. These records indicated five (5) RUP sales to Mr. William Barry Freedman, a private pesticide applicator whose certification expired on December 31, 2015, although the sales invoice reflected Mr. Freedman's certification expired on December 31, 2018.
3. Based on Complainant's Inspector's records review, he noted the following sales invoices:  
  
03/23/16 - Ticket # 163211, 300 gal. Bicep II Magnum, EPA Reg. No. 100-817  
04/14/16 - Ticket # 163312, 75 gal. Bicep II Magnum, EPA Reg. No. 100-817  
04/14/16 - Ticket # 1634381, 240 gal. Bicep II Magnum, EPA Reg. No. 100-817  
04/28/18 - Ticket # 163386, 100 gal. Bicep II Magnum, EPA Reg. 100-817  
05/05/16 - Ticket # 163412, 60 gal. Gramoxone SL 2.0 EPA Reg. 100-1431
4. Based on these findings, Complainant's Inspector met with Respondent, the salesman and



certified dealer for Coastal AgroBusiness Corp., to discuss the sales transactions involving Mr. Freedman. Respondent confirmed the sale of RUPs to Mr. Freedman, but stated that he was not aware that Mr. Freedman's certification had expired.

5. During Complainant's Inspector's interview, Respondent stated that the computer system does not allow the sale of an RUP if the customer has an expired pesticide certification number and that the reason Mr. Freedman was able to purchase the RUPs was because the system recognized that his certification did not expire until December 31, 2018. Based on the sales records reviewed, Respondent concluded that there must have been a data entry error at the Greenville corporate office. Respondent further stated that he could manually override the computer if he were to discover that a customer no longer had proper certification to purchase an RUP.

6. Based on the information provided by Respondent, Complainant's Inspector met with Mr. Freedman on August 24, 2016. At that time, Mr. Freedman stated that he was not aware that his pesticide certification had expired and apologized for being out of compliance.

7. Mr. Freedman verified the purchase of Bicep II Magnum and Gramoxone SL 2.0 on the dates and quantities reflected on the sales invoices provided by Mr. McRae. Mr. Freedman also confirmed the application of all the RUP herbicides listed on the invoices, except for five gallons of Bicep II Magnum, which he returned to Coastal AgroBusiness Corp. on July 27, 2016.

8. During his interview, Mr. Freedman informed Complainant's Inspector that he would be taking the recertification exam on August 31, 2016. As of the date of this Notice, Mr. Freedman is a certified pesticide applicator with the State of North Carolina.

9. The following pesticides were involved:

Gramoxone SL Herbicide (paraquat), EPA Reg. No. 100-1431, a bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison

Bicep II Magnum Herbicide (s-metolachlor, atrazine), EPA Reg. No. 100-817, a chloroacetamide/ triazine herbicide, Class III, Caution.

10. The Label Statements for the pesticides involved read:

"RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ..."

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-451(a)(3) and (13)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 NCAC 09L .1302

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty, which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.

- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
  - (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.
14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.
15. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

*Vance G. McRae*

Vance G. McRae  
Coastal AgroBusiness Corp.  
294 Main Street  
Fair Bluff, North Carolina 28439

*6/23/2017*

Date

*James W. Burnette, Jr.*

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

*July 6, 2017*

Date

*Christopher R. McLennan*

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

*7/5/17*

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the *14<sup>th</sup>* day of *November*

NORTH CAROLINA PESTICIDE BOARD

BY:

*[Signature]*  
Vice Chairman



IR2016-071

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Vance G. McRae,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Vance G. McRae, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-083

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

BRYSON J. COOPER,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Bryson J. Cooper, Respondent.

1. At all times relevant to this matter, Respondent held North Carolina Aerial Pesticide Applicator (Pilot) License No. 027-803 and was employed with Craft Air Services, 865 Swamp Road, Hertford, North Carolina 27944.
2. On September 30, 2016, Complainant's Inspector Christopher H. Hassell met with Ms. Wendy Wand in regards to a complaint made of an aerial pesticide application to an adjacent cotton field drifting onto her car as she passed by on Body Road, near Woodland Church Road, in Hertford, Perquimans County, North Carolina on September 28, 2016.
3. On September 30, 2016, Complainant's Inspector took soil and vegetation samples from the Body Road right-of-way as well as a swab from Ms. Wand's car.
4. Complainant's Inspector then interviewed the owner of the cotton field, Mr. Billy W. Pierce. Mr. Pierce stated he had hired Craft Air Services to apply products to his cotton field.
5. Complainant's Inspector also interviewed Respondent of Craft Air Services who stated he did make an application to the Piece cotton field on September 28, 2016. Respondent stated that on that date he applied Klean-Pic 500SC, Folex 6EC, and Superboll to defoliate the cotton.

6. At the time of the interview, Respondent admitted to Complainant's Inspector that he probably drifted some defoliant into the right of way, but did not think that he sprayed any vehicles. Additionally, Respondent alleged that Mr. Pierce had also applied these same pesticides to his cotton field. However, Mr. Pierce and his application records confirmed that Mr. Pierce did not spray the field borders with the pesticides at issue until October 3, 2016, which was after the investigation samples were collected and the event date mentioned in the complaint.

7. The investigation revealed that the pesticides involved were:

Klean-Pik 500SC Cotton Defoliant (thidiazuron), EPA Reg. No. 66222-124, a defoliant/desiccant, Class III, Caution.

Super Boll Plant Regulator (ethephon), EPA Reg. No. 228-659, Class II, a plant growth regulator, Class I, Danger.

Folex 6 EC Cotton Defoliant (tribufos), EPA Reg. No. 5481-504, a defoliant/desiccant, Class I, Danger.

8. Laboratory analysis of the samples collected by the inspector revealed the following:

		<u>Thidiazuron</u>	<u>Tribufos</u>	<u>Befenthrin</u>
CH-46	Non-target vegetation, Body Rd. south r-o-w, 6 ft. from road	0.179 ppm	2.75 ppm	
CH-47	Non-target soil, Body Rd. south r-o-w, 6 ft. from road	BQL<0.005 ppm	ND	
CH-48	Non-target vegetation, Body Rd. north r-o-w, 3 ft. from road	0.596 ppm	3.44 ppm	
CH-49	Non-target soil, Body Rd. north r-o-w, 3 ft. from road	0.019 ppm	ND	
CH-50	Control swab	ND	ND	
CH-51	Swab from Wand car window	0.094 $\mu$ g	ND	
CH-52	Target vegetation, 40 ft. east of 696 Body Rd.	1.08 ppm	6.90 ppm	
CH-53	Target soil, Pierce cotton field	0.035 ppm	0.387 ppm	0.208 ppm
CH-54	Target vegetation, Pierce cotton field	0.776	ND	

9. The labeling statements for the pesticides involved, read as follows:

*Klean-Pik 500SC Cotton Defoliant:*

**"ENVIRONMENTAL HAZARDS ...** Do not apply when weather conditions favor drift from target area."

*Folex 6 EC Cotton Defoliant:*

**"ENVIRONMENTAL HAZARDS ...** Do not make applications when weather conditions favor drift from treated areas."

10. Based on the results of our investigation, there is reason to believe that your acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443(b)(3)

It shall be unlawful for any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1005

(c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.

(e) No pesticide shall be deposited within 100 feet of any residence.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license and/or a civil penalty, which may be assessed by the Board as follows:

N.C.G.S. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of Three Thousand Two Hundred Dollars (\$3,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

(b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;



- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Three Thousand Two Hundred Dollars (\$3,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Three Thousand Two Hundred Dollars (\$3,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. § 523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

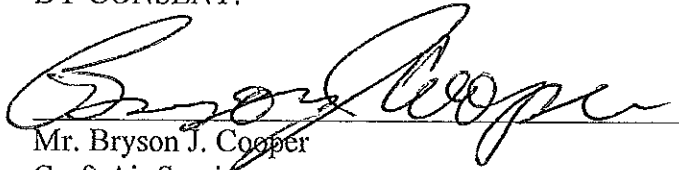
13. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

14. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

15. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

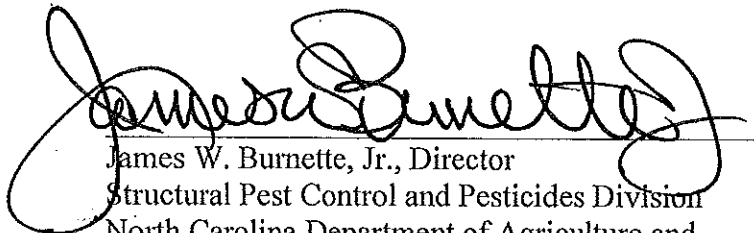
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Mr. Bryson J. Cooper  
Craft Air Services  
865 Swamp Road  
Hertford, North Carolina 27944

Sept 26, 2017  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/4/2017  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

10/9/2017  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14th day of November, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY   
Vice Chairman



2016-083

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Bryson J. Cooper,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-70

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
TIMOTHY BROCK, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Timothy Brock, Respondent.

1. At all times pertinent to this matter, Respondent was the aerial pesticide applicator, responsible licensee (Aerial Applicator License No. 027-869) and pilot for Industrial Helicopters, located at Post Office Box 61906, Lafayette, Louisiana 70596.
2. On August 24, 2016, Complainant's Inspectors, Charlie Jones and Chris Smith investigated an aerial pesticide drift complaint from Ms. Deanna M. Bell of 49900 Fontana Drive, Richfield, North Carolina as a result of an aerial pesticide application to a forestry tract behind her home which caused herbicide injury to her garden.
3. During the interview with Ms. Bell, she reported damage to her garden following an aerial pesticide application made by Industrial Helicopters to a tract of land owned by Alcoa Power Generating Inc.
4. On August 25, 2016, based on the information provided by Ms. Bell, Complainant's Inspectors contacted Respondent. Respondent stated that he avoided spraying near Ms. Bell's home during the application and confirmed the use of Escort, Arsenal, Pro Lib and Makaze herbicides during the aerial application.

5. Based on the information provided during the interviews conducted, Complainant's Inspectors obtained soil and vegetation samples of the target and non-target areas. Laboratory analysis of the samples collected by the inspector revealed the presence of imazapyr on the garden and all three actives on the target site, as indicated below:

Sample No	Type	Location	Imazapyr	Glyphosate	Metsulfuron methyl
CJ-32	Soil	20' from house	.003ppm	ND	ND
CJ-33	Soil	70' from house	.004ppm	ND	ND
CJ-34	Soil	Asparagus soil	.003ppm	ND	ND
CJ-35	veg	Asparagus	.050ppm	ND	ND
CJ-36	Soil	Watermelon	.004ppm	ND	ND
CJ-37	Veg	Watermelon	.030ppm	ND	ND
CJ-38	Veg	57' fence edge	.326ppm	.756ppm	.006ppm
CJ-39	soil	57' fence edge	.012ppm	ND	ND

6. Complainant's Inspectors determined the following pesticides were involved:

Arsenal (Imazapyr), EPA Reg. No. 241-299 Class III Caution;

Escort (Metsulfuron), EPA Reg. No. 432-1549 Class III Caution;

Prep-it (Imazapyr, Glyphosate), EPA Reg. No. 34704-989 Class III Caution; and

Makaze (Glyphosate) EPA Reg. No. 34704-890 Class III Caution.

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1005 (e) (f)

No pesticide shall be deposited within 100 feet of any residence.

No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(d) of this Agreement.

- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
  - (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.
10. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.
11. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

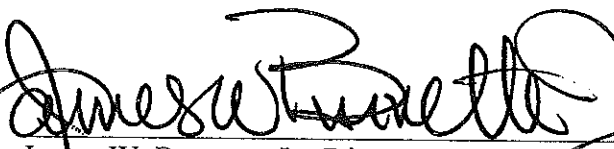
BY CONSENT:



Timothy Brock  
Industrial Helicopters LLC  
Post Office Box 61906  
Lafayette, Louisiana 70596

6/28/17

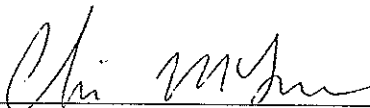
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

Date

July 6, 2017



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

Date

7/6/17

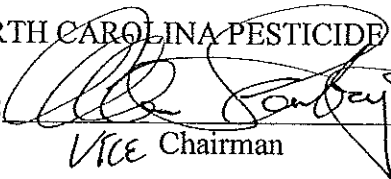
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
VICE Chairman





2016-70

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Timothy Brock

**Respondent,**

Supplemental Information

Settlement conference was held with Michael Richard (owner of Industrial Helicopters) in lieu of Timothy Brock. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2015-52

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

JOSHUA DAUGHTRY, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Joshua Daughtry, Respondent.

1. At all times pertinent to this matter, Respondent was the pesticide applicator and responsible licensee (Applicator License No. 038-85165) and resides at 4432 Princeton-Kelly Road, Kenly, North Carolina 27542.
2. On August 3, 2015, Complainant's Inspector William B. Dunn conducted an investigation into an allegation of drift filed by Mr. Robert Hinnant. During the investigation, Complainant's Inspector met with Mr. Hinnant at his grape vineyard identified as Field No. 12 and noted discoloration and spotting of the grapes and grape leaves in the first row of the vineyard. Complainant's Inspector also confirmed with Mr. Hinnant that he had not applied any herbicides in or around his vineyard.
3. During the interview, Mr. Hinnant was able to point out the soybean field located directly north of his vineyard. Mr. Hinnant also informed Inspector Dunn that the soybean field in question was tended by Mr. Erwin Massengill and that an application to the soybeans had been performed several weeks earlier. The damage to Mr. Hinnant's vineyard followed this application and was the reason Mr. Hinnant requested the investigation.

4. On August 3, 2015, following the interview with Mr. Hinnant, Complainant's Inspector met with Mr. Massengill. At that time, Mr. Massengill informed Complainant's Inspector that the application in question was performed by his employee Respondent, Joshua Daughtry. Complainant's Inspector met with Respondent who confirmed that he applied Prefix and Roundup Powermax II to the soybean field in question on June 15, 2015.

5. Complainant's Inspector requested that Dr. Henry Wade review the photographs taken during the investigation of this case and Dr. Wade concluded: "I reviewed this case, including photos taken by [Inspector] Dunn. To a reasonable degree of scientific certainty, the damage to the grapes was caused by herbicide drift from the soybean field North of the vineyard."

6. Complainant's Inspector determined the following pesticides were involved:

Prefix Herbicide (fomesafen, metolachlor), EPA Reg. No. 100-1268,  
a diphenylether/ chloroacetamide postemergent soybean herbicide, Class II, Warning.

Roundup Powermax II Herbicide (glyphosate), EPA Reg. No. 524-537,  
a defoliant/ desiccant, soybean herbicide, Class III, Caution.

7. The label statements obtained by Complainant's Inspector read as follows:

*Prefix Herbicide:*

"APPLICATION DIRECTIONS ... Sensitive Areas ... Prefix Herbicide should only be applied when the potential for drift to adjacent sensitive areas (e.g., residential areas, bodies of water, known habitat for threatened or endangered species, non-target crops) is minimal (e.g., when wind is blowing away from the sensitive areas)."

*Roundup Powermax II Herbicide:*

"AVOID CONTACT OF THIS HERBICIDE WITH FOLIAGE, GREEN STEMS, EXPOSED NON-WOODY ROOTS OR FRUIT OF CROPS ..., DESIRABLE PLANTS AND TREES, AS SEVERE INJURY OR DESTRUCTION COULD RESULT. ..."

8. Laboratory analysis of the samples collected by Complainant's Inspector revealed the following:

		<u>Fomesafen</u>	<u>S-metolachlor</u>	<u>Glyphosate</u>	<u>AMPA</u>
BD-05	Non-target vegetation, Hinnant Grapevine	ND	ND	BQL<0.20ppm	ND
BD-06	Non-target grapes, Hinnant Vineyard	ND	ND	ND	ND
BD-07	Non-target vegetation, Hinnant Grapevine	10.19 ppb	ND	0.41 ppm	ND
BD-08	Non-target grapes, Hinnant Vineyard	5.99 ppb	ND	0.29 ppm	ND
BD-09	Target vegetation, Massengill soybean field	ND	ND	3.97 ppm	BQL<0.40ppm
BD-10	Target soil, Massengill soybean field	BQL<10.00ppb	ND	ND	BQL<0.10ppm
BD-11	Target vegetation, Massengill soybean field	ND	ND	1.38 ppm	BQL<0.30 ppm

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S §143-456 (a) (2) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S §143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)(a) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)(a) only for willful violations.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Six Hundred Dollars (\$600.00) in six (6) payments of One Hundred Dollars (\$100.00) each. Respondent's first payment of One Hundred Dollars (\$100.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining five (5) installment payments, in the amount of One Hundred Dollars (\$100.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Six Hundred Dollars (\$600.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) as outlined in paragraph 11(a) of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of

any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

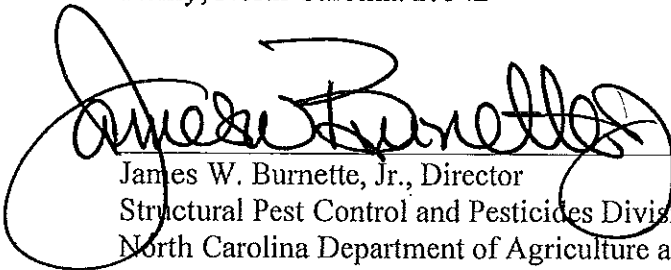
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



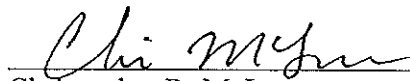
Joshua Daughtry  
4432 Princeton-Kelly Road  
Kenly, North Carolina 27542

11-13-17  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

11/21/2017  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

11/20/2017  
Date

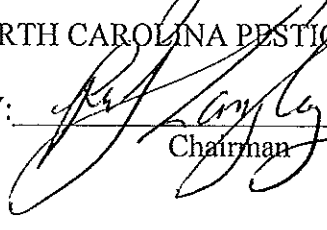
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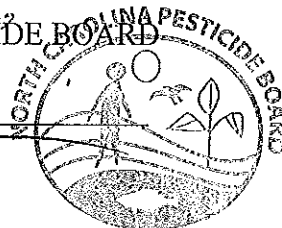
APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of January, 2016.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



IR2015-052

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Joshua Daughtry,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Joshua Daughtry, Respondent  
Patrick N. Farquhar, Eastern Field Manager





STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

File No. IR2016-41

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

GREGORY A. LYON, Individually, )  
and d/b/a LYON-N-D-GRASS, )

Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Gregory A. Lyon (individually and d/b/a Lyon-N-D-Grass), Respondent.

1. At all times pertinent to this matter, Respondent was the owner and operator of Lyon-N-D-Grass, located at 311 Harper Avenue, Carolina Beach, North Carolina 28428. At no time relevant hereto was Respondent licensed as a commercial pesticide applicator.
2. On June 30, 2016, Complainant's Inspector, S. Jimmy Merritt received an anonymous complaint that Respondent, Gregory A. Lyon of Lyon-N-D-Grass, performed commercial pesticide applications at residential properties located in Carolina Beach, North Carolina without a valid pesticide license and without the use of proper personal protective equipment.
3. Based on these allegations, Complainant's Inspector met with Respondent on July 1, 2016 to discuss the services he provided to his residential customers in the Carolina Beach area. During that interview, Respondent admitted that he applied Roundup to the properties at issue. He also stated that he previously maintained a pesticide license (No. 026-27746 L, E), but allowed it to lapse in 2011 because he no longer treated commercial properties and only performed applications to residential properties.

4. During this interview, Complainant's Inspector explained to Respondent that he is required to maintain a valid commercial pesticide license if performing pesticide applications for compensation. Complainant's Inspector also reminded Respondent that, although there is no personal protective equipment (PPE) required during the application of Roundup, he should be aware of the PPE requirements during the application of pesticides.

5. Complainant's Inspector confirmed the pesticide involved as:

Roundup Weed & Grass Killer Concentrate Plus (glyphosate, diquat dibromide), EPA Reg. No. 71995-29, a fast-acting, nonselective, foliar-applied, contact herbicide and plant desiccant, Class III, Caution.

6. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

02 NCAC 09L .0503(a)

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.

N.C.G.S. § 143-452(a)

No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

N.C.G.S. §143-456(a)(5) and (15)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

7. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty which may be assessed by the Board as follows:

N.C.G.S. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

8. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 8(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 8(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

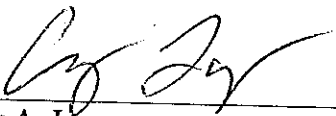
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

9. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

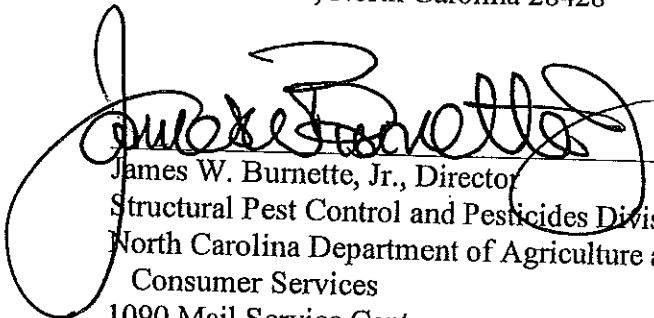
10. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

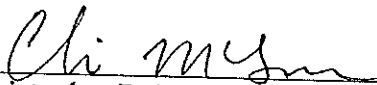
BY CONSENT:

  
\_\_\_\_\_  
Mr. Gregory A. Lyon  
Lyon-N-D-Grass  
311 Harper Avenue  
Carolina Beach, North Carolina 28428

11/14/17  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

11/21/2017  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

11/20/2017  
\_\_\_\_\_  
Date

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APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of January, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY:   
\_\_\_\_\_  
Chairman



IR2016-041

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Gregory A. Lyon,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Gregory A. Lyon, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA	)	BEFORE THE NORTH CAROLINA
	)	PESTICIDE BOARD
COUNTY OF WAKE	)	File No. IR2016-47(B)
	)	
NORTH CAROLINA DEPARTMENT OF	)	
AGRICULTURE AND CONSUMER	)	
SERVICES, STRUCTURAL PEST	)	
CONTROL AND PESTICIDES DIVISION,	)	
	)	
Complainant,	)	
	)	SETTLEMENT AGREEMENT
v.	)	
	)	
JACK O. GEORGE, JR.,	)	
	)	
Respondent.	)	

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Jack O. George, Jr., Respondent.

1. At all times pertinent to this matter, Respondent, Jack O. George, Jr. was employed by NCDOT Roadside Environmental Landscapes Department, and held Public Pesticide Operator (Fed-State)-Ground License No. 031-3819.
2. On July 11, 2016, Complainant's Inspector Eric Ball, investigated a complaint from Elizabeth W. Hood regarding a pesticide drift from an application to a right of way (ROW) located at 2508 West Innes Street, Salisbury, North Carolina, which border the front of her property.
3. Ms. Hood further stated she began noticing pesticide damage to her blueberry bushes, fig tree and other plants bordering the ROW application. Ms. Hood was concerned about what had been sprayed and also what affect the pesticide application may have on her and her dog's health. Ms. Hood did not know who made the ROW application but thought it may be the city of county.
4. Complainant's Inspector referred Ms. Hood to John Allran, Environmental Toxicologist with the Structural Pest Control and Pesticides Division.
5. Complainant's Inspector collected nine (9) samples from the blueberries and blueberry leaves, figs and the fig tree leaves, a non-target soil sample taken 6' 6" West of the dog fence and 5' 10" North of the fig tree, a target vegetative sample and a target soil sample from the road bank which were taken 12' East of the edge of the road and 20' West of the pear tree in the back yard.



6. On July 12, 2016, Complainant's Inspector went to the City of Salisbury maintenance department to see if they had made the ROW application along West Innes Street. Complainant's Inspector was informed that portion of West Innes Street was a Department of Transportation ("DOT") maintained roadway.

7. On July 14, 2016, Complainant's Inspector went to the Salisbury DOT office and was advised that, based upon the address where the application was made, he should contact Thomas Gammons, the Transportation Supervisor, with the NCDOT Roadside Environmental Landscapes Department in Winston-Salem. Complainant's Inspector was also advised that there was a 100ft right of way on that section of West Innes Street.

8. On July 15, 2016, Complainant's Inspector met with Thomas Gammons (031-4339), Respondent (031-3819), and Jackie D. Tucker from NCDOT Roadside Environmental District 9. Respondent confirmed that the group had made a pesticide application to the ROW at issue on June 27, 2016 at approximately 9:00 a.m.

9. Respondent further stated that the group performed a stump treatment using Element 4 on bamboo that had been mowed off of the road bank. The application group used an injection truck with the pressure on the lowest setting 1 of 4. Respondent stated on that setting the pressure would be approximately 15-20psi. The normal rate for a stump treatment is 20-30gal per 100 gallons, but to be careful, the crew cut the rate back to 12.5gal per 100gal. Respondent stated there was no wind blowing at the time and he was very careful not to spray up past the road bank.

10. Several samples were taken during the investigation. Initially all samples were taken within a 50 foot right of way and detected Triclopyr, but later Ms. Hood stated that other plants were not looking well. Complainant's Inspector returned on July 20, 2016 and took additional samples outside of the ROW.

11. Laboratory analysis of the samples collected by Complainant's inspector determined that they were positive for Triclopyr. Specifically, the laboratory results were as follows:

Sample No	Type	Type	Location	Triclopyr
EB-40	Fruit	Target	Blueberries	7.38ppm
EB-41	Veg	Target	Blueberry leaves	47.2ppm
EB-42	Fruit	Target	Figs	9.60ppm
EB-43	Veg	Target	Fig leaves	33.2ppm
EB-44	Soil	Target	12 ft from W Innis	0.418ppm
EB-45	Soil	Target	Dog fence	85.2ppm
EB-46	Veg	Target	Vegetation	480ppm
EB-51	Veg	NonTarget	Rose bush	1.49ppm
EB-52	Veg	NonTarget	Crepe Myrtle	0.467ppm

12. Complainant's Inspector determined that the following pesticide was involved:

ELEMENT 4 (Triclopyr), EPA Reg. No.62719-40, Class III Caution

13. The label statement for Element 4 (Triclopyr) states:

Do not apply Element 4 directly to, or otherwise permit it to come into direct contact with, cotton, grapes, peanuts, soybeans, tobacco, vegetable crops, flowers, citrus, or other desirable broadleaf plants. Do not permit spray mists containing Element 4 to drift onto such plants.

14. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C. Gen. Stat. § 143-443

- (b) It shall be unlawful:
- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C. Gen. Stat. § 143-456

- (a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:
- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

15. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license and/or civil penalty which may be assessed by the Board as follows:

N.C. Gen. Stat. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

16. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) Respondent's payment shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 16(d) and waives said right by consenting to the terms of this Agreement;
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 16(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Jack O. George, Jr.  
Mr. Jack O. George, Jr.  
NCDOT Roadside Environmental Landscapes Department  
405 Polo Road  
Winston-Salem, North Carolina 27105

11-27-17  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

12-19-2017  
Date

Chris McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

12/19/2017  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of January, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY:

Chairman



2016-47

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Jack George, Jr.

**Respondent,**

Supplemental Information

Settlement conference was held with Jack George, Jr.. Respondent agreed to civil penalty with discussion.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-71B

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

WILLIAM BARRY FREEDMAN,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and William Barry Freedman, Respondent.

1. At all times pertinent to this matter, Respondent was a private pesticide applicator with an expired license (No. 038-84638) and resided at 1282 Jordan Road in Clarkton, North Carolina 28433.
2. On August 23, 2016, Complainant's Pesticide Inspector, S. Jimmy Merritt, conducted a routine Restricted Use Pesticide (RUP) Sales Records Inspection of Coastal AgroBusiness Corp. in Fair Bluff, North Carolina. These records indicated five (5) RUP sales to Respondent, William Barry Freedman, a private pesticide applicator whose certification expired on December 31, 2015, although the sales invoice reflected Respondent's certification expired on December 31, 2018.
3. Based on Complainant's Inspector's records review, he noted the following sales invoices:
  - 03/23/16 - Ticket # 163211, 300 gal. Bicep II Magnum, EPA Reg. No. 100-817
  - 04/14/16 - Ticket # 163312, 75 gal. Bicep II Magnum, EPA Reg. No. 100-817
  - 04/14/16 - Ticket # 1634381, 240 gal. Bicep II Magnum, EPA Reg. No. 100-817
  - 04/28/18 - Ticket # 163386, 100 gal. Bicep II Magnum, EPA Reg. 100-817
  - 05/05/16 - Ticket # 163412, 60 gal. Gramoxone SL 2.0 EPA Reg. 100-1431
4. Based on these findings, Complainant's Inspector met with Mr. Vance G. McRae, the salesman and certified dealer for Coastal AgroBusiness Corp., to discuss the sales transactions

involving Respondent. Mr. McRae confirmed the sale of RUPs to Respondent, but stated that he was not aware that Respondent's certification had expired.

5. Based on the information provided by Mr. McRae, Complainant's Inspector met with Respondent on August 24, 2016. At that time, Respondent stated that he was not aware that his pesticide certification had expired and apologized for being out of compliance.

6. Complainant's Inspector determined that Respondent purchased the Bicep II Magnum and Gramoxone SL 2.0 on the dates and quantities reflected on the sales invoices provided by Mr. McRae and that Respondent had applied all of the RUP herbicides listed on the invoices, except for five gallons of Bicep II Magnum, which Respondent returned to Coastal AgroBusiness Corp. on July 27, 2016.

7. During his interview, Respondent informed Complainant's Inspector that he would be taking the recertification exam on August 31, 2016.

8. The following pesticides were involved:

Gramoxone SL Herbicide (paraquat), EPA Reg. No. 100-1431, a bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison

Bicep II Magnum Herbicide (s-metolachlor, atrazine), EPA Reg. No. 100-817, a chloroacetamide/ triazine herbicide, Class III, Caution.

9. The Label Statement for the pesticides involved read:

"RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision ..."

10. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456(a)(2), (5) and (15)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

Failed to pay the original or renewal license fee when due and continued to operate as applicator, or applied pesticides without a license.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to a civil penalty and/or action against a certification, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-440(b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C.G.S. § 143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) and only for willful violations.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement, which is not any admission of liability, is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement.



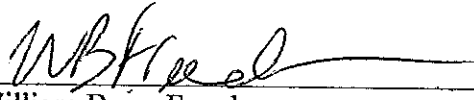
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

13. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

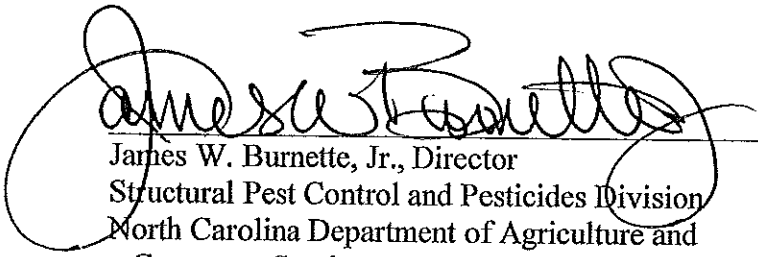
14. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

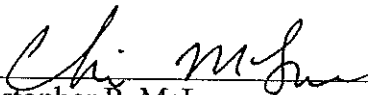
BY CONSENT:

  
\_\_\_\_\_  
William Barry Freedman  
1282 Jordan Road  
Clarkton, North Carolina 28433

1-2-18  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-9-2018  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

1/9/18  
\_\_\_\_\_  
Date

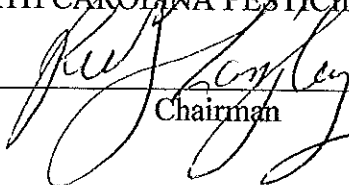
\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of January, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
\_\_\_\_\_  
Chairman





STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-79

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

GEORGE R. STONE,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and George R. Stone, Respondent.

1. At all times pertinent to this matter, Respondent was the licensed commercial pesticide applicator (License No. 026-22643) for Stone Forestry Service, Inc., Post Office Box 1041, Trenton, Georgia 30752.
2. On August 16, 2016, Complainant's Inspector Bruce A. Nicely investigated a pesticide drift complaint from Mr. Jim Murray, which resulted from a pesticide application to a Right-of-Way for Blue Ridge Electric in Murphy, North Carolina. Mr. Murray reported that the pesticide application was applied directly to a stream and was concerned it may result in harm to the environment and natural water system.
3. Based upon the allegations, Complainant's Inspector began an investigation and contacted Mr. Fred Grey with Blue Ridge EMC. During his interview, Mr. Grey stated that all recent right-of-way applications in the Murphy area were contracted with Stone Forestry, headquartered in Trenton, Georgia. Mr. Grey confirmed that Respondent, George R. Stone was the certified/licensed applicator for Stone Forestry and that Respondent was in charge of overseeing all pesticide applications for Stone Forestry. In addition, Mr. Grey verified that the following pesticides were used to treat the right-of-way: Roundup Custom, Method 240SL, Arsenal Herbicide and Escort XP. Application records obtained during the investigation indicate the applications occurred on August 1-5, 2016.

4. During the course of this investigation, Mr. Charlie Piazza contacted the Section to report a similar complaint of potential pesticide drift exposure to an area stream and was extremely concerned by the herbicide damage that resulted from the pesticide application.

5. Based on the information provided during the investigation, Complainant's Inspector contacted Stone Forestry and spoke with Mr. Jim Benton. Mr. Benton confirmed that Stone Forestry conducted the right-of-way applications and that all applicators were instructed to spray up from the water's edge rather than down into the water, but that many streams are not always visible under heavy vegetation in the right of way areas. Mr. Benton also confirmed that all applications were performed using backpack sprayers and that Blue Ridge EMC staff was onsite during the applications.

6. As a result of his findings, Complainant's Inspector took photographs of the apparent herbicide damage and obtained samples of vegetation overhanging the stream, as well as soil and sediment samples from the stream bed. Laboratory analysis of the samples collected by the inspector revealed the following:

Sample No	Type	Location	Aminocyclopyrachlor	Imazapyr	Metsulfuron Methyl	Glyphosate
BN-45	Veg	Overhanging stream	32.9ppm	111ppm	2.31ppm	272ppm
BN-46	Soil	Stream bank	ND	0.066ppm	BQL	ND
BN-47	Sediment	In stream	ND	ND	ND	ND
BN-48	Veg	Overhanging stream	2.76ppm	5.15ppm	0.131ppm	27.3ppm
BN-49	Veg	Overhanging stream	35.2ppm	75.4ppm	1.12ppm	191ppm

7. Complainant's Inspector determined the following pesticides were involved:

Roundup Custom For Aquatic & Terrestrial Use; Glyphosate...53.8%; EPA Reg. No. 524-343, Class III, Caution.

Arsenal Herbicide; Imazapyr...53.15%; EPA Reg. No. 241-299, Class III, Caution.

Method 240SL; Potassium Salt of aminocyclopyrachlor, Potassium Salt of 6-amino-5-chloro-2 cyclopropyl-4-pyrimidinecarboxylic acid...25%; EPA REG. NO.432-1565, Class III, Caution.

Escort XP; Metsulfuron methyl...60%; EPA Reg. No. 432-1549, Class III, Caution.

8. The label statements for these pesticides read as follows:

Roundup Custom For Aquatic & Terrestrial Use: No violations noted.

Arsenal Herbicide: **Aquatic Sites, Public waters**, "Application of Arsenal herbicide Applicators Concentrate to water can only be made by federal or state agencies, such as Water Management District personnel, municipal officials, and the U.S. Army Corps of Engineers, or those applicators who are licensed or certified as aquatic pest control

applicators and are authorized by state or local governments.” (Stone Forestry is only certified in Forestry and Right of Way, not aquatic.)

Method 240SL: **Environmental Hazards**, “Do not apply directly to water, or to areas where surface water is present or to intertidal areas below the mean high water mark.”

Escort XP: **Environmental Hazards**, “Do not apply directly to water, or to areas where surface water is present or to intertidal areas below the mean high water mark.”

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456 (a) (2) (4) & (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

12. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

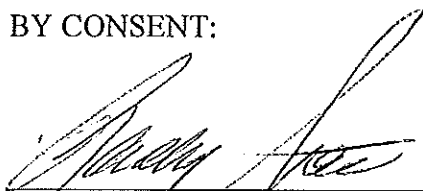
13. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

13. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

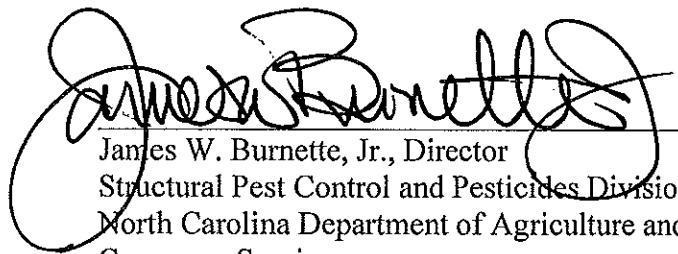


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

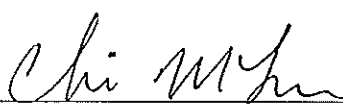
BY CONSENT:

  
George R. Stone  
Stone Forestry Service, Inc.  
Post Office Box 1041  
Trenton, Georgia 30752

11/21/17  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

11/30/2017  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

11/29/2017  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of January, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



2016-79

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

George Stone

**Respondent,**

Supplemental Information

Settlement conference was held with George Stone. Respondent agreed to civil penalty with discussion.



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-082

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
PATRICK E. FAULKNER, II )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Patrick E. Faulkner, II, Respondent.

1. At all times relevant hereto, Respondent was the manager of Crop Production Services ("CPS") in Trenton, North Carolina and held North Carolina Pesticide Dealer License No. 037-3849 and Commercial Pesticide Applicator License No. 026-17128.
2. On September 20, 2016, Complainant's Inspector John H. Colborne and Pesticide Investigative Specialist Paul Ward visited Jameson Quinn farm, which is located in Cove City, North Carolina.
3. In an outdoor storage area, the inspectors observed a 2.5-gallon container of a restricted use pesticide ("RUP"). The RUP was a gallon container of Gramoxone SL 2.0 Herbicide EPA No. 100-1431. The storage area contained a full 2.5 gallon container of Gramoxone SL 2.0 Herbicide and a partial 2.5 gallon container of Gramoxone SL 2.0 Herbicide. At the time, Mr. Quinn did not have a valid pesticide license or certificate authorizing him to purchase or use RUPs.
4. Complainant's Inspector Colborne telephoned Mr. Quinn to determine who had sold him the Gramoxone SL 2.0 Herbicide. Mr. Quinn stated, CPS of Trenton, North Carolina was making a commercial agricultural plant herbicide application to 500 – 600 acres of tobacco stubble on his farm in order to control grass. This commercial application began on September 16, 2016, but was interrupted by rain and the RUP was stored at his farm; however, it was the property of CPS.

5. Complainant's Inspector Colborne drove to CPS in Trenton, North Carolina and met with Respondent, who is the manager of the facility. A notice of inspection was presented and Respondent was advised that CPS was being investigated on why Mr. Jameson Quinn, owner of Quinn Farms had four (4) gallons of the RUP Gramoxone SL 2.0 Herbicide in storage at his farm.

6. Respondent was aware Mr. Quinn did not have a North Carolina private pesticide applicator license. Respondent stated CPS was making a commercial agricultural plant herbicide application to 500 – 600 acres of tobacco stubble to control grass for Quinn Farms in Cove City, North Carolina. Respondent asserted that no invoice or counter ticket documents were made regarding the application since it was not completed.

7. Respondent alleged that a CPS employee, Mr. Justin Thomas, was working under his direct supervision and that Mr. Thomas had left the mentioned RUP at the farm near a water source on September 17, 2016 and that an employee of Quinn Farms must have moved the product to the doorway of the pesticide storage to get it out of the rain.

8. Respondent was advised of the North Carolina State Pesticide Regulations/Law that do not allow him to make a RUP available to a non-certified person.

9. Complainant's inspector determined that the following pesticide was involved:

Gramoxone SL 2.0 Herbicide (paraquat dichloride)  
EPA Reg. No. 100-1431, a bipyridylium, contact, non-selective herbicide,  
Class I, Danger-Poison

10. The label statements obtained by Complainant's Inspector for Gramoxone SL 2.0 Herbicide reads as follows:

**RESTRICTED USE PESTICIDE**  
DUE TO ACUTE TOXICITY  
FOR RETAIL SALE TO AND USE ONLY BY CERTIFIED APPLICATORS OR PERSONS UNDER THEIR DIRECT SUPERVISION  
AND ONLY FOR THOSE USES COVERED BY THE CERTIFIED APPLICATOR'S CERTIFICATION

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-451

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection;

(13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

N.C.G.S. §143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required;

02 NCAC 09L .1302

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

02 NCAC 09L .1402

All licensed pesticide applicators, as defined in G.S. 143-460 which includes public operators, utilizing ground equipment shall keep for three years and make available to the commissioner for like period records of all applications of restricted use pesticides showing the following:

(1) name of licensed pesticide applicator or licensed public operator;

(6) the year, month, date and the specific time of day when each pesticide application was completed and each day of application shall be recorded as a separate record;

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations may result in the suspension, revocation or denial of a pesticide license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Six Hundred Dollars (\$1600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Six Hundred Dollars (\$1600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Six Hundred Dollars (\$1600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

16. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.



WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Patrick E. Faulkner II

Patrick E. Faulkner, II.  
Crop Production Services  
372 Hwy 58 South  
Trenton, North Carolina 28585

11-22-17  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services

1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

11/30/2017  
Date

Chi McLenan

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

11/29/2017  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of January, 2017<sup>B</sup>.

NORTH CAROLINA PESTICIDE BOARD

BY:

Chairman



IR2016-082

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Patrick E. Faulkner, II,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Patrick E. Faulkner, II, Respondent

Patrick N. Farquhar, Eastern Field Manager



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-086

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
ANTHONY R. ALLRED, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Anthony R. Allred, Respondent.

1. At all times relevant hereto, Respondent held North Carolina Commercial Pesticide Applicator License No. 26-31385.
2. On October 5, 2016, an anonymous complaint alleged that William "Billy" Ray Storms (Private Pesticide Applicator No. 38-40801) was using agricultural pesticides from his farm on his golf course. Mr. Storms is a farmer and owner of Land O Lakes Golf Course in Columbus County.
3. On October 11, 2016, Complainant's Inspector Jimmy Merritt met with Respondent, the General Manager, at Land O Lakes Golf Course located at 2950 Bill Hooks Road near Whiteville, North Carolina. Mr. Billy Ray Storms was present. Mr. Storms is a farmer in Bladen County and the owner of Land O Lakes Golf Course in Columbus County.
4. Complainant's Inspector presented a Notice of Inspection and explained the anonymous complaint to Respondent and Mr. Storms.
5. Respondent stated that on occasion he has asked Mr. Storms to purchase chemicals needed for the golf course and he would provide him with the common chemical names of the products needed in lieu of a brand name. Respondent said that the mix up came from Mr. Storms being a farmer and an owner of a golf course and not explaining to the pesticide salesman where the products will be used. Mr. Storms stated that he did not know that the products purchased were not labeled for golf course use.

6. Complainant's Inspector explained the use site requirements and that farm chemicals not labeled for use on golf courses could not be used.

7. Respondent admitted that he has applied agricultural pesticides at Land O Lakes Golf Course not label for golf course use in 2016, but used them because the products were in storage and he needed to make the applications. Respondent further stated that on May 25, 2016 he applied Ridomil Gold SL EPA Reg. No. 100-1202 at a rate of 21oz. /A. to three acre of greens and that on October 6, 2016 he applied Tilt Fungicide EPA Reg. No. 100-617 at a rate of 5oz. /A. to three acres of greens. A calendar was provided and photographed to show the entries of these applications.

8. Respondent provided a written statement admitting to the use of agricultural products on the Land O Lakes Golf Course. As a responsive action, Respondent stated in the letter, "We are correcting the problem by moving those products to the farm and specifically purchasing our turf products separate from the owner's farm products."

9. Complainant's Inspector determined the following pesticides were involved:

Ridomil Gold SL (mefenoxam), EPA Reg. No. 100-1202, a, Class III, Caution.

Tilt Fungicide (propiconazole), EPA Reg. No. 100-617, an, Class II, Warning.

10. Complainant's Inspector photographed the products that Mr. Allred had logged as applied to the golf course. Neither *Ridomil Gold SL* nor *Tilt Fungicide* are labeled for use on golf courses.

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(4) Operated in a faulty, careless, or negligent manner;

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations may result in the denial, revocation or suspension of a pesticide license and/or a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

- (b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Nine Hundred Dollars (\$900.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Nine Hundred Dollars (\$900.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Nine Hundred Dollars (\$900.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.


14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

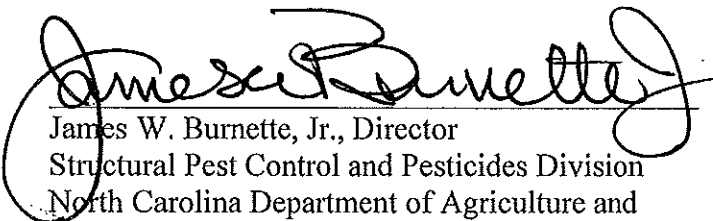
16. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

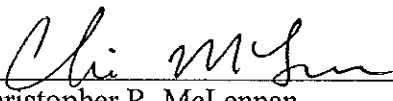
BY CONSENT:

  
Mr. Anthony R. Allred  
General Manager—Land O Lakes Golf Course  
2950 Bill Hooks Road  
Whiteville, North Carolina 28472

11/10/17  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

11/22/2017  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

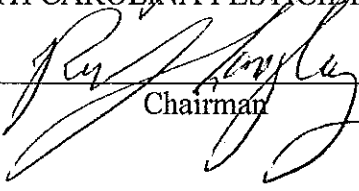
11/22/2017  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 9<sup>th</sup> day of January, 2017.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman





IR2016-086

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Anthony R. Allred,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-33

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

JAMES E. GODWIN,

Respondent.

SETTLEMENT AGREEMENT

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and James E. Godwin, Respondent.

1. At all times pertinent to this matter, Respondent was the owner of JEG Farms located at 710 Raleigh Street in Newton Grove, North Carolina 28366. Mr. Godwin supervised, for JEG Farms, Mr. Deleon P. Lee, the applicator, at all times regarding this investigation.

2. On June 20, 2016, a North Carolina Pesticides Inspector, S. Jimmy Merritt investigated a pesticide drift complaint from Mr. and Mrs. James E. Ives of Burgaw, North Carolina regarding a pesticide application to an agricultural field adjacent to their property which caused herbicide damage to their garden.

3. On June 21, 2016, Complainant's Inspector interviewed Mr. James E. Ives who reported that, upon return from vacation, he noticed the field adjacent to his property was completely brown as a result of a pesticide burndown application. Mr. Ives also reported seeing burned and spotted leaves on various vegetable plants in his garden.

4. Based on the information provided by Mr. Ives, Complainant's Inspector inspected the Ives' garden and noted more significant pesticide damage on the far east and west portions of the garden, as the middle portion seemed to be shielded from the pesticide drift by the Ives' home and trees on the property. Based on these findings, Complainant's Inspector provided Mrs. Ives with contact information for Mr. John Allran, an Environmental Toxicologist to discuss possible contamination of the vegetables produced from the Ives' garden.

5. Based on Complainant's Inspector's investigative findings, he contacted Mr. Carl Murray, the owner of the field adjacent to the Ives' property. Mr. Murray stated that he had not applied any herbicides to the field adjacent to the Ives' property since early March, but admitted he recently contracted with Crop Production Services to apply a burndown treatment to that field prior to planting his soybean crop.

6. As a result, on June 21, 2016, Complainant's Inspector met with Mr. William A. (Mark) Tyndall, Jr., with Crop Production Services in Clinton, North Carolina to obtain information regarding the burndown treatment applied to Mr. Murray's fields. At that time, Mr. Tyndall stated that he contracted with JEG Farms to provide the burndown treatment, but that he sold the herbicide/pesticides for the application to Mr. Murray.

7. On June 22, 2016, Complainant's Inspector met Deleon P. Lee, with JEG Farms regarding the actual application performed on Mr. Murray's field in preparation for planting soybeans. Mr. Lee holds a pesticide applicator license (Commercial Pesticide Applicator License No. 026-18587 H, L). Mr. Lee admitted that he performed the application to the target field and that he had a commercial pesticide license certification. However, Mr. Lee's license expired in 2011. Complainant's Inspector verified that Mr. Lee was previously certified in Ornamental & Turf and Right of Way applications, but was never certified in Ag Pest Plant applications. Mr. Lee indicated that he believed he was covered under the sub-classes on his license to perform the application in question and did not realize his license was expired.

8. Based on the information provided during the interviews conducted, Complainant's Inspector obtained vegetation samples of the target and non-target areas. Laboratory analysis of the samples collected by the inspector revealed the following:

		<u>Glyphosate</u>	<u>AMPA</u>	<u>Gramoxone</u>	<u>Pyraflufen-ethyl</u>	<u>Metolachlor</u>
JM-41	Non-target vegetation, Ives' garden	ND	ND	ND	ND	---
JM-42	Target vegetation, Murray soybean field	42.1 ppm	BQL < 0.750 ppm	9.72 ppm	ND	0.014 ppm

9. Complainant's Inspector determined the following pesticides were involved:

Gramoxone SL 2.0 Herbicide (paraquat dichloride), EPA Reg. No. 100-1431, a bipyridylum, contact, non-selective herbicide, Class I, Danger/Poison.

ET Herbicide/Defoliant (pyraflufen ethyl), EPA Reg. No. 71711-7, a fast-acting contact defoliant/desiccant herbicide Class 1, Danger.

Roundup Power Max Herbicide (glyphosate), EPA Reg. No. 524-549, a defoliant/desiccant herbicide, Class III, Caution.

10. The label statements obtained by Complainant's Inspector read as follows:

*Gramoxone SL 2.0 Herbicide:*

**"Environmental Hazards ... Drift ...** Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas."

11. During the investigation, Complainant's Inspector consulted Dr. Alan York and requested he review the photographs taken of the vegetation damage at issue. Dr. Alan York looked at the photographs in this case and stated, "This one seems pretty clear cut. ET, being a contact, may have contributed to the symptoms. And, one sunflower has a yellow terminal that could be glyphosate. However, the tan spots on corn, squash, and cucumbers are characteristic of paraquat."

12. Mr. Deleon P. Lee renewed his license promptly following this investigation. Mr. Lee also added the Ag Pest Plant category to his license on July 7, 2016. In addition, Mr. Godwin, owner of JEG Farms, visited the Ives' garden site and provided written confirmation that the Gramoxone utilized in the burndown application drifted onto the Ives' garden. He also stated that he would compensate the Ives for their losses resulting from the pesticide drift damage to their garden.

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

02 NCAC 09L .0503(a)

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-452(a)

No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator

N.C.G.S. §143-456 (a) (2) (5) & (15)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

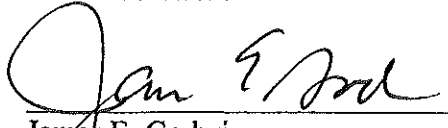
- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(c) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(c) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

16. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

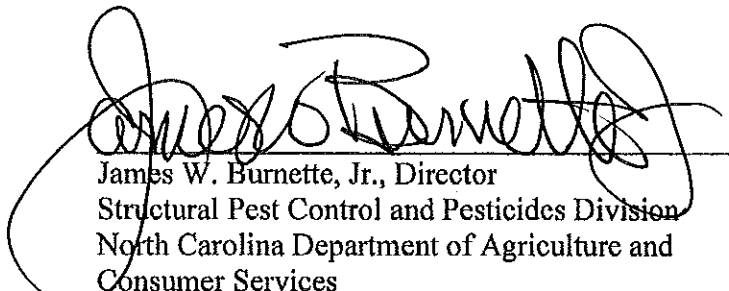
17. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

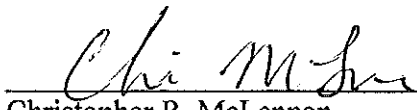
BY CONSENT:

  
James E. Godwin  
JEG Farms  
710 Raleigh Street  
Newton Grove, North Carolina 28366

6-8-18  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

6/13/2018  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/13/18  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of July, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

James E. Godwin,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

James E. Godwin, Respondent

Patrick N. Farquhar, Eastern Field Manager





STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-077

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

SCOTT R. SAINTSING, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Scott R. Saintsing, Respondent.

1. At all times pertinent to this matter, Respondent presented himself as a licensed pesticide applicator for Outdoor Exposure 807 Burguss Road, High Point, North Carolina 27265.
2. On September 2, 2016, Complainant's Pesticide Specialist, Jason Williams, received a complaint made by a concerned consumer regarding the landscaper she had hired that might not have a valid North Carolina Pesticide License.
3. The consumer, Ms. Lori Murad, met Complainant's Pesticide Inspector, William Bradley Boyd, at her home located at 1525 E. Greensboro Chapel Hill Rd, Graham, North Carolina 27253.
4. During the visit Ms. Murad provided Complainant's Inspector an invoice from Outdoor Exposure. The invoice stated that Respondent had charged Ms. Murad \$1,500.00 for spraying herbicide to knock down the underbrush. Ms. Murad stated she never saw anything die from the spraying that she was billed for.
5. Ms. Murad showed Complainant's Inspector a website called Thumbtack.com where Respondent was contacted through a selected option for landscape-lawn care services in her area.

6. After being connected with Outdoor Exposure Inc., Ms. Murad saw it advertised within the business Q&A section how Respondent held a "License and certifications to spray certain chemicals and insecticides. ISA Certified Arborist." Respondent's credentials could not be found on the International Society of Arboriculture's website.

7. Complainant's Inspector researched and confirmed that Respondent did not hold any licenses or prior certification as a licensed pesticide applicator, private or commercial, nor listed as an ISA Certified Arborist.

8. Complainant's Inspector contacted Respondent to set up a time to meet him and discuss the invoice given to Ms. Murad. Respondent met the inspector at the Forsyth County Extension office located at 1450 Fairchild Road, Winston-Salem, North Carolina.

9. Complainant's Inspector asked Respondent if he has/had been making pesticide applications and the response was that he does not spray. When Ms. Murad's invoice was presented to Respondent he took responsibility for the job.

10. Complainant's Inspector also showed Respondent the Thumbtack website which stated he was licensed to spray pesticides and he also took ownership of the publication. Text messages of correspondence made between Respondent and also Ms. Murad in the request of the landscaping job was shared where it mentioned he was on his way to the site requested to spray the underbrush. Respondent verified the text messaging.

11. Complainant's Inspector explained to Respondent that he could not spray a pesticide without a valid pesticide license in North Carolina. Respondent advised that he would be attending the Pesticide School and complete the testing offered at the Forsyth County Extension office on September 13, 2017 and September 14, 2017.

12. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-452

(a) No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

(15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 14(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of

any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. § 523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.


15. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

16. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

17. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

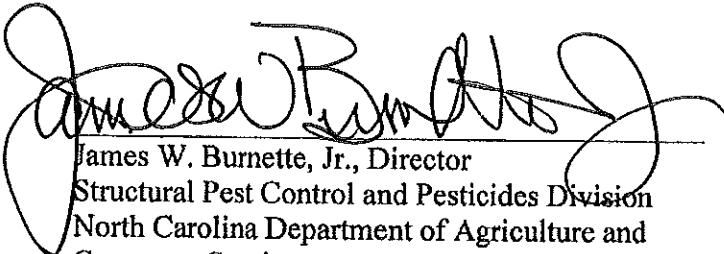
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

  
\_\_\_\_\_

Mr. Scott R. Saintsing  
Outdoor Exposure  
807 Burguss Road  
High Point, NC 27265

June 06 2018  
Date

  
\_\_\_\_\_

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

7/10/2018  
Date

  
\_\_\_\_\_

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/11/2018  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of July, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY: \_\_\_\_\_

Chairman



IR2016-077

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Scott R. Saintsing,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Scott R. Saintsing, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-11A

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

CLINT W. BRYANT,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Clint W. Bryant, Respondent.

1. At all times pertinent to this matter, Respondent held Commercial Pesticide Applicator License No. 026-31695 and was the responsible pesticide applicator and superintendent for Lion's Paw and Panther Run golf courses, which are part of Ocean Ridge Plantation, 351 Ocean Ridge Parkway SW, Ocean Isle Beach, North Carolina 28469.
2. On March 2, 2017, Complainant received an anonymous complaint alleging that Ocean Ridge Plantation was using agricultural pesticides on its golf courses.
3. On March 03, 2017, Complainant's Pesticide Inspector Jimmy Merritt visited Ocean Ridge Plantation golf maintenance facilities, but they were closed due to half day work schedule on Fridays. Ocean Ridge Plantation has three golf courses that are maintained by two separate maintenance facilities. Respondent is the superintendent for Lion's Paw and Panther Run golf courses and Mr. Scott Deans is the superintendent for Leopard's Chase golf course.
4. On March 06, 2017, Complainant's Inspector met with Mr. Matthew Russ at Lion's Paw/Panther Run maintenance facility at Ocean Ridge Plantation and explained the complaint. Mr. Russ stated that he is a spray technician and that he and Respondent make all of the pesticide applications at the two golf courses they maintain. Mr. Russ said that he was not aware of any agricultural pesticides being used on the golf courses. Complainant's Inspector conducted a storage inspection and no agricultural pesticides were found. Respondent called Complainant's Inspector during the inspection and he said that he uses a generic sulfosulfuron 75% called



OutRider in lieu of Certainty Turf Herbicide, because it's cheaper and is labeled for use on Bermuda grass. He stated that he was not sure if it was labeled for golf course use.

5. On March 6, 2017, Complainant's Inspector also met with Mr. Deans at the Leopard's Chase maintenance facility and he said that he had applied OutRider on the tees and fairways in October 2016. He had one container of Outrider in storage. Mr. Deans stated that he made a request to their purchasing agent for Certainty Turf Herbicide but received OutRider Herbicide. Mr. Deans stated that Mr. Bill Long is the purchasing agent and he always tries to find the best prices by requesting generic products if available. Mr. Deans stated that when he received the OutRider, he saw that the product had the same active ingredients and percentages as Certainty Turf Herbicide and it was labeled for use on Bermuda grass. Mr. Deans provided Inspector Merritt with a statement regarding his application of Outrider.

6. Complainant's Inspector explained to Mr. Deans that it is the end user's responsibility to read and follow all label directions and Inspector Merritt showed him in the label where it stated, "Do not use this product on or around athletic fields, commercial turf sites, golf courses, residential turf sites or sod and turfgrass seed farms."

7. On March 07, 2017, Complainant's Inspector met with Respondent and Mr. Long at the Lions Club office. Respondent stated that he applied OutRider Herbicide, EPA Reg. No. 524-500, on tees and fairways in October 2016. Respondent said that he thought the product was a generic form of Certainty Turf Herbicide because the product had the same active ingredients and percentage as Certainty Turf Herbicide and was labeled for use on Bermuda grass.

8. Mr. Long provided Complainant's Inspector with purchase order #11883 that he wrote for OutRider Herbicide on which he identified it as "Generic Certainty". Mr. Long stated that he contacted Green Resource for a generic form of Certainty Turf Herbicide and the Green Resource Salesman, Mr. Keith Williams, told him that OutRider was a generic form of Certainty Turf Herbicide. Mr. Long stated that he asked Mr. Williams specifically if the product was labeled for golf course use and was told yes. Mr. Long provided a statement and it has been included with this report.

9. Complainant's Inspector explained to Respondent and Mr. Long that it is the end users responsibility to read and follow all label directions and showed them in the label where it stated, "Do not use this product on or around athletic fields, commercial turf sites, golf courses, residential turf sites or sod and turfgrass seed farms."

10. On March 07, 2017, Complainant's Inspector met with Mr. Williams at Green Resource and showed him invoice #INV00350580 and asked if he sold the Sedge Killer Plus, OutRider, to Ocean Ridge Plantation and he said yes. Inspector Merritt asked if he told Mr. Long that OutRider Herbicide was labeled for use on the golf course and said no. Mr. Williams said that Mr. Long asked him for OutRider Herbicide, so he sold it to him. Inspector Merritt asked him if he knew the product was not labeled for use on golf courses and he stated yes. Mr. Williams stated that OutRider is labeled for roadsides, fencerows, ditches, storage areas etc. which are use sites located at Ocean Ridge Plantation. He stated, he was not informed of application sites and therefore did not know where they were going to apply the product at Ocean Ridge Plantation.

11. The following pesticide was involved in this investigation:

OutRider Herbicide (sulfosulfuron), EPA Reg. No. 524-500, a sulfonylurea herbicide, Class III, Caution.

12. Label Statement for the pesticide involved reads:

"DIRECTIONS FOR USE ... NON-CROP, PASTURES AND RANGELAND  
USE SITES: ... Do not use this product on or around athletic fields, commercial turf sites, golf courses, residential turf sites or sod and turfgrass seed farms"

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456(a) (2) (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license and/or a civil penalty, which may be assessed by the Board as follows:

N.C.G.S. 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) The Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Eight Hundred Dollars (\$800.00) in eight (8) payments of One Hundred Dollars (\$100.00) each. Respondent's first payment of One Hundred Dollars (\$100.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining seven (7) installment payments, in the amount of One Hundred Dollars (\$100.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Eight Hundred Dollars (\$800.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 1436-461(7), 146-464, and 143-469;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent further acknowledges and agrees that, if Respondent fails to make any payment as required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court and file a Statement Authorizing Confession of Judgment in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (e) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) according to the payment plan outlined in 15(a), this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(e) and waives said right by consenting to the terms of this Agreement.

- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(e) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
  - (f) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.
16. As further evidence of good faith and as consideration for this Agreement, Respondents agree to sign and acknowledges that they have signed, before a Notary Public, a Confession of Judgment in the amount of Eight Hundred Dollars (\$800.00) in favor of Complainant. Respondents further acknowledges and agrees that if Respondents fail to make any payment required under the terms of this Agreement, Complainant may institute an action in Wake County Superior Court, and file the Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law.
- (a) Complainant hereby agrees that, so long as Respondents comply with the terms of this Agreement, Complainant will not institute any civil action against Respondents to collect the sum of money owed pursuant to this Agreement or file the Confession of Judgment Respondent has executed and provided to Complainant. Furthermore, Complainant agrees to file the Confession of Judgment only if Respondents fail to make a payment on time, pursuant to the terms of this Agreement, after giving Respondent notice of his failure to make said payment, and after allowing Respondent three (3) business days to cure his breach by paying the amount due in full.
  - (b) Complainant further agrees that, once Respondents have made their final payment and the Complainant has received Eight Hundred Dollars (\$800.00) in satisfaction of the terms of this Agreement, Complainant shall provide to Respondents a document confirming receipt of payment and releasing Respondents from further liability under this Agreement. Complainant will also provide Respondents with the original Confession of Judgment, unless original Confession of Judgment has already been filed by reason of Respondents' breach of this Agreement.

17. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

18. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

19. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Clint W. Bryant

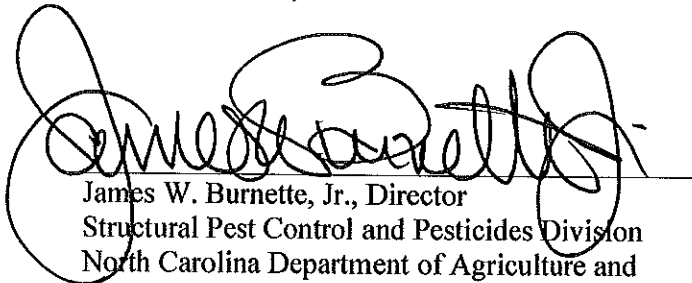
Lion's Paw/Panther Run Golf Links  
Ocean Ridge Plantation  
351 Ocean Ridge Parkway SW  
Ocean Isle Beach, North Carolina 28469

5-31-18  
Date

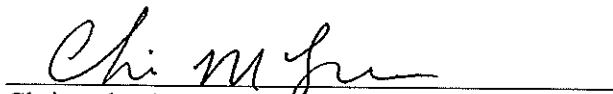
GAIL A. MILLER  
NOTARY PUBLIC  
BRUNSWICK COUNTY  
NORTH CAROLINA  
My Commission Expires: 4-30-19

  
Gail A. Miller

6-8-2018  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services

1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

  
Christopher R. McLennan

Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/7/2018  
Date

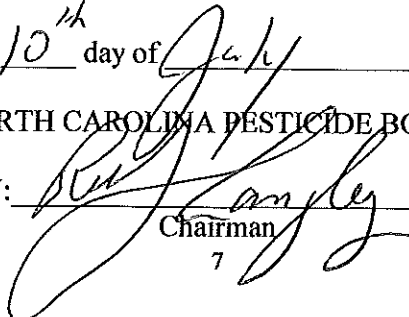
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APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of July, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman  
7



IR2017-11A(RSA)

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Clint W. Bryant,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Clint W. Bryant, Respondent  
Bill Long, Ocean Ridge Plantation Purchasing Agent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-11B

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

ROBERT SCOTT DEANS, )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Robert Scott Deans, Respondent.

1. At all times pertinent to this matter, Respondent held Commercial Pesticide Applicator License No. 026-4879 and was the responsible pesticide applicator and superintendent for Leopard's Chase golf course, which are part of Ocean Ridge Plantation, 351 Ocean Ridge Parkway SW, Ocean Isle Beach, North Carolina 28469.
2. On March 2, 2017, Complainant received an anonymous complaint alleging that Ocean Ridge Plantation was using agricultural pesticides on its golf courses.
3. On March 03, 2017, Complainant's Pesticide Inspector Jimmy Merritt visited Ocean Ridge Plantation golf maintenance facilities, but they were closed due to half day work schedule on Fridays. Ocean Ridge Plantation has three golf courses that are maintained by two separate maintenance facilities. Mr. Clint Bryant is the superintendent for Lion's Paw and Panther Run golf courses and Respondent is the superintendent for Leopard's Chase golf course.
4. On March 06, 2017, Complainant's Inspector met with Mr. Matthew Russ at Lion's Paw/Panther Run maintenance facility at Ocean Ridge Plantation and explained the complaint. Mr. Russ stated that he is a spray technician and that he and Mr. Bryant make all of the pesticide applications at the two golf courses they maintain. Mr. Russ said that he was not aware of any agricultural pesticides being used on the golf courses. Complainant's Inspector conducted a storage inspection and no agricultural pesticides were found. Mr. Bryant called Complainant's Inspector during the inspection and he said that he uses a generic sulfosulfuron 75% called



OutRider in lieu of Certainty Turf Herbicide, because it's cheaper and is labeled for use on Bermuda grass. He stated that he was not sure if it was labeled for golf course use.

5. On March 6, 2017, Complainant's Inspector also met with Respondent at the Leopard's Chase maintenance facility and he said that he had applied OutRider on the tees and fairways in October 2016. He had one container of Outrider in storage. Respondent stated that he made a request to their purchasing agent for Certainty Turf Herbicide but received OutRider Herbicide. Respondent stated that Mr. Bill Long is the purchasing agent and he always tries to find the best prices by requesting generic products if available. Respondent stated that when he received the OutRider, he saw that the product had the same active ingredients and percentages as Certainty Turf Herbicide and it was labeled for use on Bermuda grass. Respondent provided Inspector Merritt with a statement regarding his application of Outrider.

6. Complainant's Inspector explained to Respondent that it is the end user's responsibility to read and follow all label directions and Inspector Merritt showed him in the label where it stated, "Do not use this product on or around athletic fields, commercial turf sites, golf courses, residential turf sites or sod and turfgrass seed farms."

7. On March 07, 2017, Complainant's Inspector met with Mr. Bryant and Mr. Long at the Lions Club office. Mr. Bryant stated that he applied OutRider Herbicide, EPA Reg. No. 524-500, on tees and fairways in October 2016. Mr. Bryant said that he thought the product was a generic form of Certainty Turf Herbicide because the product had the same active ingredients and percentage as Certainty Turf Herbicide and was labeled for use on Bermuda grass.

8. Mr. Long provided Complainant's Inspector with purchase order #11883 that he wrote for OutRider Herbicide on which he identified it as "Generic Certainty". Mr. Long stated that he contacted Green Resource for a generic form of Certainty Turf Herbicide and the Green Resource Salesman, Mr. Keith Williams, told him that OutRider was a generic form of Certainty Turf Herbicide. Mr. Long stated that he asked Mr. Williams specifically if the product was labeled for golf course use and was told yes. Mr. Long provided a statement and it has been included with this report.

9. Complainant's Inspector explained to Mr. Bryant and Mr. Long that it is the end users responsibility to read and follow all label directions and showed them in the label where it stated, "Do not use this product on or around athletic fields, commercial turf sites, golf courses, residential turf sites or sod and turfgrass seed farms."

10. On March 07, 2017, Complainant's Inspector met with Mr. Williams at Green Resource and showed him invoice #INV00350580 and asked if he sold the Sedge Killer Plus, OutRider, to Ocean Ridge Plantation and he said yes. Inspector Merritt asked if he told Mr. Long that OutRider Herbicide was labeled for use on the golf course and said no. Mr. Williams said that Mr. Long asked him for OutRider Herbicide, so he sold it to him. Inspector Merritt asked him if he knew the product was not labeled for use on golf courses and he stated yes. Mr. Williams stated that OutRider is labeled for roadsides, fencerows, ditches, storage areas etc. which are use sites located at Ocean Ridge Plantation. He stated, he was not informed of application sites and therefore did not know where they were going to apply the product at Ocean Ridge Plantation.

11. The following pesticide was involved in this investigation:

OutRider Herbicide (sulfosulfuron), EPA Reg. No. 524-500, a sulfonylurea herbicide, Class III, Caution.

12. Label Statement for the pesticide involved reads:

"DIRECTIONS FOR USE ... NON-CROP, PASTURES AND RANGELAND  
USE SITES: ... Do not use this product on or around athletic fields, commercial turf sites, golf courses, residential turf sites or sod and turfgrass seed farms"

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456(a)(2)(5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license and/or a civil penalty, which may be assessed by the Board as follows:

N.C.G.S. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) The Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Eight Hundred Dollars (\$800.00) in eight (8) payments of One Hundred Dollars (\$100.00) each. Respondent's first payment of One Hundred Dollars (\$100.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining seven (7) installment payments, in the amount of One Hundred Dollars (\$100.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Eight Hundred Dollars (\$800.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 1436-461(7), 146-464, and 143-469;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent further acknowledges and agrees that, if Respondent fails to make any payment as required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court and file a Statement Authorizing Confession of Judgment in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (e) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) according to the payment plan outlined in 15(a), this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(e) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(e) of this Agreement.

(iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

(f) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

16. As further evidence of good faith and as consideration for this Agreement, Respondents agree to sign and acknowledges that they have signed, before a Notary Public, a Confession of Judgment in the amount of Eight Hundred Dollars (\$800.00) in favor of Complainant. Respondents further acknowledges and agrees that if Respondents fail to make any payment required under the terms of this Agreement, Complainant may institute an action in Wake County Superior Court, and file the Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law.

(a) Complainant hereby agrees that, so long as Respondents comply with the terms of this Agreement, Complainant will not institute any civil action against Respondents to collect the sum of money owed pursuant to this Agreement or file the Confession of Judgment Respondent has executed and provided to Complainant. Furthermore, Complainant agrees to file the Confession of Judgment only if Respondents fail to make a payment on time, pursuant to the terms of this Agreement, after giving Respondent notice of his failure to make said payment, and after allowing Respondent three (3) business days to cure his breach by paying the amount due in full.

(b) Complainant further agrees that, once Respondents have made their final payment and the Complainant has received Eight Hundred Dollars (\$800.00) in satisfaction of the terms of this Agreement, Complainant shall provide to Respondents a document confirming receipt of payment and releasing Respondents from further liability under this Agreement. Complainant will also provide Respondents with the original Confession of Judgment, unless original Confession of Judgment has already been filed by reason of Respondents' breach of this Agreement.

17. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

18. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

19. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

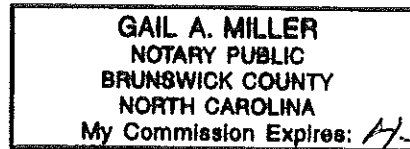
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

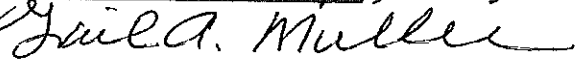
BY CONSENT:



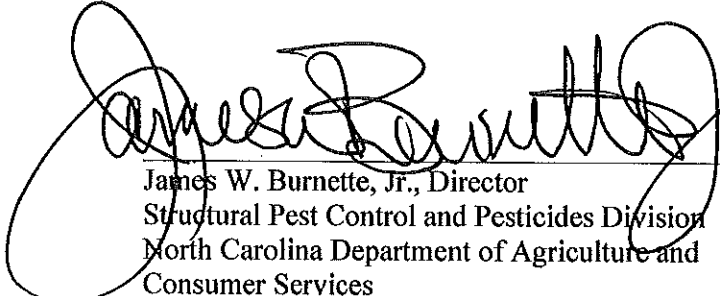
Robert Scott Deans  
Leopard's Chase Golf Club  
Ocean Ridge Plantation  
351 Ocean Ridge Parkway SW  
Ocean Isle Beach, North Carolina 28469

May 29, 2018  
Date





6-8-2018  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/7/2018  
Date

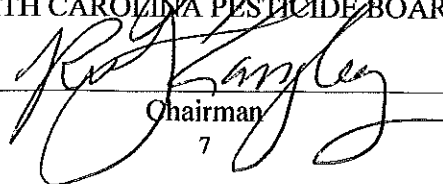
\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of July

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman  
7



IR2017-11B(RSA)

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Robert Scott Deans,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Robert Scott Deans, Respondent  
Bill Long, Ocean Ridge Plantation Purchasing Agent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-030

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

GERALD B. BALLANCE,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Gerald B. Ballance, Respondent.

1. At all times pertinent to this matter, Respondent held Private Pesticide Applicator Certification No. 038-3640 and farmed at Ballance Farms, 5825 U.S. 117 N, Fremont, North Carolina 27830-9551
2. On May 11, 2017, Complainant's Pesticide Inspector conducted an investigation based on a referral from the North Carolina Department of Labor alleging possible Worker Protection Standards (WPS) violations at a farm owned by Respondent occurring on May 4, 2017.
3. On May 11, 2017, Complainant's Inspector met Respondent at his farm and asked him if he had any H2A farmworkers present and Respondent said that he did. Complainant's Inspector completed a WPS inspection with Respondent and three of his workers and Complainant's Inspector found that Respondent had allowed early-entry workers to remain in the treated area for an unlimited period of time and allowed them to contact the treated soil while performing the early-entry task.
4. Mr. Eduardo Perez told Complainant's Inspector that he wore long pants, long-sleeved shirt, shoes and socks when walking behind the tobacco transplanter and doing the early entry task. Mr. Gonzalez Gutierrez told Complainant's Inspector that he wore long pants, long-sleeved shirt, shoes and socks when walking behind the tobacco transplanter and doing the early entry task.



5. Respondent told Complainant's Inspector that his workers did enter the fields and contacted the treated soil before the Restricted-Entry Interval (REI) had expired.

6. In reviewing Respondent's application records for May 4, 2017, Complainant's Inspector noticed that they were incomplete in that they did not contain beginning and ending time of the application and that the application records were not posted prior to the application being performed.

7. The investigation revealed that the following pesticides were involved:

Ridomil Gold SL (mefinoxam), EPA Reg. No. 100-1202, 48-hr REI, a fungicide, Seed Treatment/Protectant, Class III, Caution.

Spartan 4F Herbicide (sulfentrazone), EPA Reg. No. 279-3220, 12-hr REI, an aryl triazolinone herbicide, Class III, Caution.

Command 3ME Microencapsulated Herbicide (clomazone), EPA Reg. No. 279-3158, 12-hr REI, a selective, preplant-incorporated herbicide, Class III, Caution.

Aim EC Herbicide (carfentrazone-ethyl), EPA Reg. No. 279-3241, 12-hr REI, a postemergent, contact herbicide, Class III, Caution.

Orondis Gold 200 Fungicide (oxathiapiprolin), EPA Reg. No. 100-1571, 4-hr REI, a fungicide, Class III, Caution.

8. Label Statement for the pesticides involved in this investigation read as follows:

Ridomil Gold SL Fungicide:

DIRECTIONS FOR USE AGRICULTURAL USE REQUIREMENTS ... Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI) of 48 hours. ... Exception: If the product is soil-injected or soil-incorporated, the Worker Protection Standard, under certain circumstances, allows workers to enter the treated area immediately if there will be no contact with anything that has been treated. ... PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water is: • Coveralls • Chemical-resistant gloves, (barrier laminate, butyl rubber, nitrile rubber, neoprene rubber, polyvinyl chloride (PVC), or Viton) • Shoes plus socks.

SPARTAN 4F Herbicide:

DIRECTIONS FOR USE AGRICULTURAL USE REQUIREMENTS ... Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI) of 12 hours. ... Personal Protective Equipment (PPE) required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water is: Coveralls over long-sleeved shirt and long pants, chemical -resistant gloves ... and shoes plus socks.

COMMAND 3ME HERBICIDE:

DIRECTIONS FOR USE AGRICULTURAL USE REQUIREMENTS ... Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI) of 12 hours. ... Exception: If the product is soil-injected or soil-incorporated, the Worker Protection Standard, under certain circumstances, allows workers to enter the treated area immediately if there will be no contact with anything that has been treated. ... PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water is: • Coveralls • Chemical-resistant gloves, (barrier laminate, butyl rubber, nitrile rubber, neoprene rubber, polyvinyl chloride (PVC), or Viton) • Shoes plus socks."

Aim EC HERBICIDE:

DIRECTIONS FOR USE AGRICULTURAL USE REQUIREMENTS ... Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI) of 12 hours. ... Personal Protective Equipment (PPE) required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water is: Long sleeved shirt and pants, waterproof gloves, and shoes plus socks.

Orondis Gold 200 Fungicide:

DIRECTIONS FOR USE AGRICULTURAL USE REQUIREMENTS ... Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI) of 4 hours. ... Personal Protective Equipment (PPE) required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water is: • Coveralls • Shoes and socks

9. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143 456(a) (2) and (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

40 CFR §170.309 Agricultural employer duties.

Agricultural employers must:

(h) Display, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with §170.311 if workers or handlers are on the establishment and within the last 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment.

40 CFR § 170.311 Display requirements for pesticide safety information and pesticide application and hazard information.

(b) Keeping and displaying pesticide application and hazard information. Whenever pesticide safety information and pesticide application and hazard information is required to be provided under § 170.309(h), pesticide application and hazard information for any pesticides that are used on the agricultural establishment must be displayed, retained, and made accessible in accordance with this paragraph.

(1) *Content.* The pesticide application and hazard information must include all of the following information for each pesticide product applied:

- (i) A copy of the safety data sheet.
- (ii) The name, EPA registration number, and active ingredient(s) of the pesticide product.
- (iii) The crop or site treated and the location and description of the treated area.
- (iv) The date(s) and times the application started and ended.
- (v) The duration of the applicable labeling-specified restricted-entry interval for that application.

(2) *Location.* The pesticide application and hazard information must be displayed at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and where it can be readily seen and read.

(5) *Timing.* The pesticide application and hazard information for each pesticide product applied must be displayed no later than 24 hours after the end of the application of the pesticide. The pesticide application and hazard information must be displayed continuously from the beginning of the display period until at least 30 days after the end of the last applicable restricted-entry interval, or until workers or handlers are no longer on the establishment, whichever is earlier.

40 CFR § 170.603 Exceptions for entry by workers during restricted-entry intervals.

An agricultural employer may direct workers to enter treated areas where a restricted-entry interval is in effect to perform certain activities as provided in this section, provided that the agricultural employer ensures all of the applicable conditions of this section and § 170.605 of this part are met.

(a) *Exception for activities with no contact.* A worker may enter a treated area during a restricted-entry interval if the agricultural employer ensures that all of the following conditions are met:

(1) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants. This exception does not allow workers to perform any activities that involve contact with treated surfaces even if workers are wearing personal protective equipment.

(b) *Exception for short-term activities.* A worker may enter a treated area during a restricted-entry interval for short-term activities, if the agricultural employer ensures that all of the following requirements are met:

(1) No hand labor activity is performed.

(2) The time in treated areas where a restricted-entry interval is in effect does not exceed one hour in any 24-hour period for any worker.

d) *Exceptions for limited contact and irrigation activities.* A worker may enter a treated area during a restricted-entry interval for limited contact or irrigation activities, if the agricultural employer ensures that all of the following requirements are met:

(1) No hand labor activity is performed.

40 CFR § 170.605 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval.

If an agricultural employer directs a worker to perform activities in a treated area where a restricted-entry interval is in effect, all of the following requirements must be met:

(b) Prior to early entry, the agricultural employer must provide to each early-entry worker the information described in paragraphs (b)(1) through (8) of this section. The information must be provided orally in a manner that the worker can understand.

(4) Which exception in § 170.603 is the basis for the early entry, and a description of tasks that may be performed under the exception.

(5) Whether contact with treated surfaces is permitted under the exception.

(6) Amount of time the worker is allowed to remain in the treated area.

(7) Personal protective equipment required by the pesticide product labeling for early entry.

(d) The agricultural employer must ensure that each worker who enters a treated area during a restricted-entry interval is provided the personal protective equipment specified in the pesticide product labeling for early entry. The agricultural employer must ensure that the worker uses the personal protective equipment as intended according to manufacturer's instructions and follows any other applicable requirements on the pesticide product labeling. Personal

protective equipment must conform to the standards in § 170.507(b)(1) through (9).

10. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license or certification and/or a civil penalty, which may be assessed by the Board as follows:

N.C.G.S § 143-440 (b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C.G.S. § 143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) a only for willful violations.

11. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 11(d) and waives said right by consenting to the terms of this Agreement.

- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 11(d) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

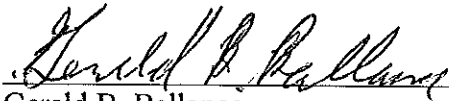
12. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

13. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

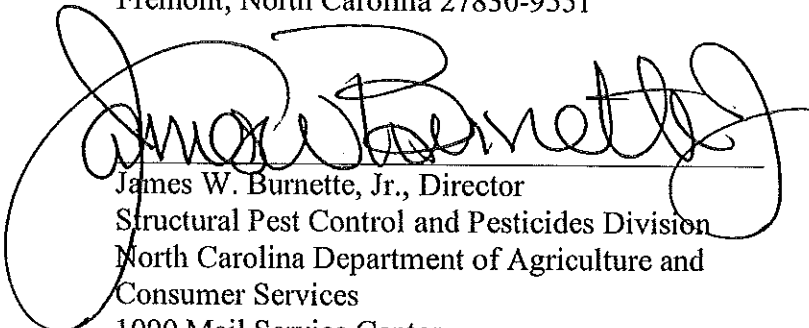
14. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

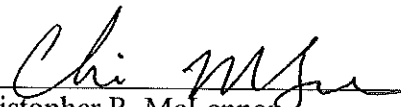
BY CONSENT:

  
Gerald B. Ballance  
Ballance Farms  
5825 U.S. 117 N  
Fremont, North Carolina 27830-9551

6-21-18  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

6-28-2018  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/28/2018  
Date

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APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of July, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Gerald B. Ballance,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Gerald B. Ballance, Respondent  
Anthony D. Balance, Brother of respondent  
Patrick N. Farquhar, Eastern Field Manager





STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-032

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
TIMOTHY A. STANCILL, )  
Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Timothy A. Stancill, Respondent.

1. At all times pertinent to this matter, Respondent held Private Pesticide Applicator Certification No. 038-82693.
2. On May 16, 2017, Complainant's Pesticide Inspectors John Colborne and Clay Hudson met with Mr. Johnny Russell at his property, located at 11625 Hwy 55 West, Dover, North Carolina, to investigate his complaint alleging herbicide drift into his yard from a nearby field. Mr. Russell said that on May 12, 2017 at approximately 3:00 p.m., he witnessed a farmer make a pesticide application with a Spray Coupe to a peanut field across the road from his property. Mr. Russell told the inspectors that at the time of application the wind was 0-5 from the north. Mr. Russell said that he noticed minor herbicide injury (bronzing of leaf tissue) to his centipede/bermudagrass lawn on May 15, 2017.
3. Mr. Russell stated that he had only applied Triad Select Herbicide, EPA Reg. No. 89442-22, to his lawn, approximately three (3) weeks earlier.
4. On May 16, 2017, Complainant's Inspectors met with Respondent who tends the peanut field across from Mr. Russell's property. Respondent stated that he has made two (2) pesticide applications to his peanut field this year.
5. Respondent said that he applied Stealth herbicide on April 25, 2017 as a pre-plant soil incorporated application to the peanut field.

6. Respondent also said that he applied Dual-Magnum Herbicide, Panther SC Herbicide, and Gramoxone SL 2.0 Herbicide to his peanut field on May 12, 2017. Respondent told the inspectors that he could not recall the wind speed and direction at the time of application.

7. On May 16, 2017, Complainant's Inspectors contacted Mr. Timothy Cox of TRC Farms by phone. Mr. Cox said that he farms the fields to his east, west and south sides of the Russell property, but that no herbicide applications have been made to his soybean fields since January 2017.

8. On May 16, 2017, Complainant's Inspector Colborne collected two (2) vegetation samples as follows:

Sample #023 – Non-Target vegetation sample (grass/weeds) taken 20' feet south of Russell property line (NC Hwy 55 West).

Sample #024 – Target vegetation sample (grass/weeds) taken 30' feet north of property line (NC Hwy 55 West) in Respondent's 19.6- acre peanut field.

9. Laboratory analysis of the samples revealed the following:

	<u>Paraquat</u>	<u>Flumioxazin</u>	<u>S-metolachlor</u>
JC-23 Non-target vegetation, Russell yard	1.08 ppm	0.083 ppm	0.094 ppm
JC-24 Target soil, Respondent's peanut field	11.8 ppm	0.631 ppm	2.08 ppm

10. The following pesticide was involved in this investigation:

Gramoxone SL 2.0 Herbicide (paraquat dichloride), EPA Reg. No. 100-1431, a bipyridylum, contact, non-selective herbicide, Class I, Danger/Poison.

Panther SC Herbicide (flumioxazin), EPA Reg. No. 71368-113, an herbicide, Class III, Caution.

Dual Magnum Herbicide (s-metolachlor), EPA Reg. No. 100-816, a chloroacetamide herbicide, Class III, Caution.

11. Label statements for the pesticides involved read as follows:

*Gramoxone SL 2.0 Herbicide:*

**Environmental Hazards ... Drift ...** Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas.

*Panther SC Herbicide:*

**Environmental Hazards ...** Do not apply when weather conditions favor drift from treated areas. ... **USE INFORMATION ... RESTRICTIONS AND LIMITATIONS ...** Do not apply when weather conditions favor drift from treated areas.

12. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143 456(a) (2) (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

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No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license or certification and/or a civil penalty, which may be assessed by the Board as follows:

N.C.G.S § 143-440 (b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C.G.S. § 143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) a only for willful violations.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 14(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by

Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

15. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

16. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

17. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Timothy A. Stancill

Timothy A. Stancill  
Stancill Farms  
5209 Stokestown - St. John Road  
Ayden, North Carolina 28513

5-28-18

Date

James W. Burnette, Jr.

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

6/18/2018

Date

Christopher R. McLennan

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/14/18

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of July, 2018

NORTH CAROLINA PESTICIDE BOARD

BY: Dee Jayley

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Timothy A. Stancill,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Timothy A. Stancill, Respondent  
Patrick N. Farquhar, Eastern Field Manager





STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-034

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

BRIAN RAY HADDOCK,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Brian Ray Haddock, Respondent.

1. At all times relevant hereto, Respondent, Brian Ray Haddock, held a Private Pesticide Applicator License No. 038-60003 and was responsible for overseeing the pesticide application at issue, which was made by Brandon R. Haddock.
2. On May 17, 2017, Complainant's Pesticide Inspector Paul Ward met Mr. Donnie Haddock at his home, located at located 5358 Clayroot Road, Vanceboro, North Carolina 28586, in response to his complaint that Brian Haddock Farms had sprayed a nearby field prior to planting peanuts and caused damages in his yard. The peanut field at issue was owned and farmed by Mr. Brian Haddock.
3. Mr. Donnie Haddock said that he thought the field was sprayed May 13 or 14, 2017, and that his yard was fine prior to the field being sprayed.
4. Complainant's Inspector observed what appeared to be herbicide drift from the peanut field in Mr. Donnie Haddock's yard.
5. Complainant's Inspector collected vegetation and soil samples from Mr. Donnie Haddock's property. Complainant's Inspector took a vegetation sample (PW-006) of flowers on the opposite side of Mr. Donnie Haddock's yard from Respondent's peanut field. He also collected flower vegetation samples (PW-007, PW-008) next to Mr. Donnie Haddock's dog pen and from

Mr. Donnie Haddock's front yard, respectively. Complainant's Inspector also collected vegetation and soil samples (PW-009, PW-010) from Respondent's peanut field.

6. On May 17, 2017, Complainant's Inspector met with Respondent at which time he said that the peanut field was his. Respondent told Inspector Ward that his son, Brandon R. Haddock, had sprayed the field with Gramoxone SL on May 15, 2017.

7. On May 17, 2017, Complainant's Inspector met with the son, Brandon R. Haddock, who said that he sprayed the peanut field at issue with Gramoxone on May 13 or 15, 2017 and he had also sprayed it with Gramoxone a couple of weeks earlier.

8. Brandon R. Haddock said that he did not know if the wind was blowing on that day, but he said that, looking at Mr. Donnie Haddock's yard, it must have been. Brandon R. Haddock acknowledged he could see damage in the yard. Complainant's Inspector asked Brandon R. Haddock if he felt the damage came from him spraying and he said it kind of looked like it.

9. On May 18, 2017, Complainant's Inspector went back to Mr. Donnie Haddock's home and collected a vegetation and a soil sample (PW-011, PW-012) near his dog pen.

10. On May 18, 2017, Complainant's Inspector also talked to Mr. Chad Jones, who farms corn across the road from Mr. Donnie Haddock. Mr. Jones said he had sprayed Roundup, Barrage, and Panther sometime between March 15 and March 18, 2017 and had sprayed nothing else since planting.

11. As part of the investigation, Dr. Alan York, Professor Emeritus, North Carolina State University, Crop and Soil Sciences, looked at the photographs in this case and stated, "I reviewed this case (IR 2017-034; Donnie Haddock investigation), including the photos taken by Paul Ward. To a reasonable degree of scientific certainty, injury symptoms to the flowers, lettuce, and grass were caused by paraquat. Additionally, the lab analyses support this conclusion."

12. Laboratory analysis of the samples collected during the investigation revealed the following:

	<u>2,4-D</u>	<u>Glyphosate</u>	<u>AMPA</u>	<u>Paraquat</u>
PW-006 Non-target flower vegetation, Haddock yard	ND	ND	ND	ND
PW-007 Non-target flower vegetation, Haddock yard	ND	ND	ND	1.52 ppm
PW-008 Non-target flower vegetation, Haddock yard	ND	ND	ND	1.78 ppm
PW-009 Target vegetation, Haddock peanut field	0.037 ppm	ND	ND	135 ppm
PW-010 Target soil, Haddock peanut field	BQL<5 ppb	ND	ND	6.07 ppm
PW-011 Non-target vegetation, Haddock yard	6.91 ppm	18.7 ppm	1.17 ppm	ND
PW-012 Non-target soil, Haddock yard	0.026 ppm	0.563 ppm	0.838 ppm	ND

13. The following pesticide was involved in this investigation:

Gramoxone SL 2.0 Herbicide (paraquat dichloride), EPA Reg. No. 100-1431, a bipyridylium, contact, non-selective herbicide, Class I, Danger/Poison.

14. Label statements for *Gramoxone SL 2.0 Herbicide* reads as follows:

**Environmental Hazards ... Drift ...** Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas.

15. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143 456(a) (2) (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

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No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

16. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license or certification and/or a civil penalty, which may be assessed by the Board as follows:

N.C.G.S § 143-440 (b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C.G.S. § 143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) a only for willful violations.

17. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Nine Hundred Dollars (\$900.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denied he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Nine Hundred Dollars (\$900.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Nine Hundred Dollars (\$900.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 17(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 17(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in

this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

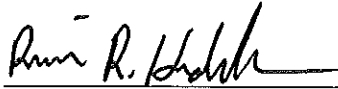
18. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

19. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

20. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

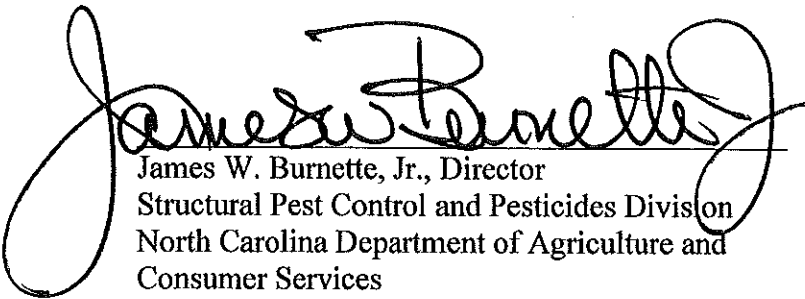
BY CONSENT:



Brian R. Haddock  
5365 NC 102-E  
Grimesland, North Carolina 27837

5-22-18

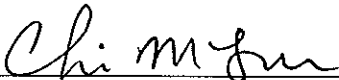
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

5/23/2018

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

5/23/2018

Date

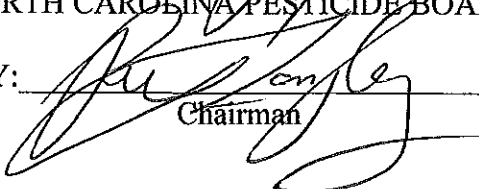
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APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of July, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



IR2017-034

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Brian R. Haddock,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Brian R. Haddock, Respondent  
Patrick N. Farquhar, Eastern Field Manager





STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JOSEPH C. KINSLAND,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-049

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Joseph C. Kinsland, Respondent.

1. On June 12, 2017, Complainant's North Carolina Pesticide Inspector, Mr. Charles Clark, received a complaint from Ms. Susie Harris of Canton, Haywood County, North Carolina regarding possible herbicide drift damage.

2. Complainant's Inspector Clark contacted Ms. Clark and discussed the complaint. Ms. Clark stated that on the evening of June 8, 2017, she and her father had arrived back home and were welcomed with a strong chemical smell in the air, which she stated irritated their eyes and caused trouble breathing. Complainant's Inspector Clark advised Ms. Harris for her and her father to seek medical assistance if she felt they were having effects from the possible herbicide application. Ms. Clark thought that the pasture located beside her property had been sprayed. The pasture is owned and tended by Respondent.

3. Complainant's Inspector Clark made arrangements to meet Ms. Clark on the morning of June 12, 2017; however, only her father, Mr. Jake Harris, was present. Complainant's Inspector Clark made a visual inspection of the property and noticed symptoms of herbicide injury on the following: Dalia flowers in a window box; strawberries growing in a back deck planter; and several plants between the house and driveway beside the pasture.

4. Complainant's Inspector Clark looked into the pasture from the driveway between the Harris property and Respondent's pasture. The inspection noted several plants within the pasture showing signs of 2,4-D type symptoms, particularly the wild blackberries. The application appeared to have been a spot application due to lack of symptoms to weeds in the flat areas of the pasture.

5. Complainant's Inspector Clark obtained samples of the strawberries from the back deck, a swab sample from the window frame above the Dalia flowerbox, and a soil sample on the Harris' property next to the driveway between the house and pasture. Another sample was collected from the wild blackberries and soil just across the fence in Respondent's pasture.

6. Also on June 12, 2017, Complainant's Inspector Clark visited the home of Respondent, located in the Newfound area of Haywood County and left him a message on his home phone. Complainant's Inspector Clark was able to speak with Respondent the following day on his cell. Respondent stated he made an application of Crossbow on the evening of June 8, 2017, to his pasture using an ATV type spot sprayer.

7. On June 15, 2017, Complainant's Inspector Clark met with Respondent at his barn located above the Harris property off of Kinsland Drive. The sprayer was a small tank ATV sprayer and a photo was taken. Respondent stated that he mixed the Crossbow with water by label rates and spot applied in his pasture and in the area along the fence near the Harris' property.

8. Respondent does not hold a North Carolina private pesticide applicator's license as he does not use Restricted Use Pesticides ("RUPs"). Respondent was certified in the past, but that was when he grew tobacco.

9. As requested, Inspector Clark relayed the product information to Ms. Harris and to John Allran, NCDA&CS Toxicologist. Ms. Harris stated she had become sick after eating some of the red romaine lettuce in her garden; she requested it be tested. A sample was pulled from one row of lettuce, which contained two varieties of romaine. The red variety was showing stress symptoms, which was a definite dividing line of stress versus no stress between the two types.

10. Laboratory analysis of the samples collected during the investigation revealed the following:

Sample No	Type	Type	Location	2,4-D/2,4-D Ester		Triclopyr/Triclopyr Ester	
CC-01	Veg	Nontarget	Harris strawberry	0.050ppm	ND	0.034	ND
CC-02	Swab	Nontarget	Control	ND	ND	ND	ND
CC-03	Swab	Nontarget	Harris House	ND	ND	ND	ND
CC-04	Soil	Nontarget	Harris property	0.016ppm	ND	BQL	ND
CC-05	Veg	Target	Kinsland Blackberry	274ppm		182ppm	
CC-06	Soil	Target	Kinsland soil	2.10ppm		1.51ppm	
CC-09	veg	Nontarget	Harris lettuce	ND	ND	ND	ND

11. The pesticide involved in this investigation was:

Southern AG Crossbow 2,4-D ester 34.4%, triclopyr ester 16.5%,  
EPA Reg. No.62719-260-829, Class III Caution

12. The labeling statement reads as follows:

*Southern Ag Crossbow* "Do not apply Crossbow directly to, or otherwise permit it to come into direct contact with cotton, grape, tobacco, vegetable crops, citrus, flowers, fruits, ornamental trees or otherwise desirable plants..."

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443(b)

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license/certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(d) A civil penalty of not more than five hundred dollars (\$500.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

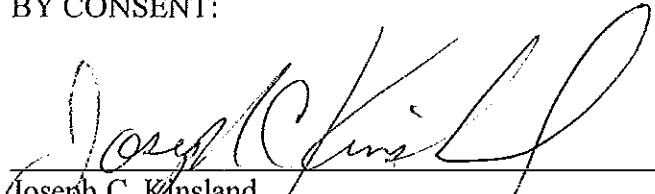
16. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

17. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

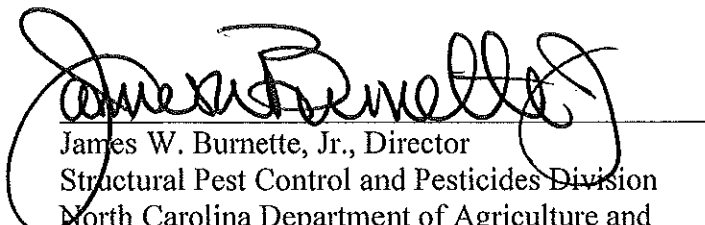
18. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

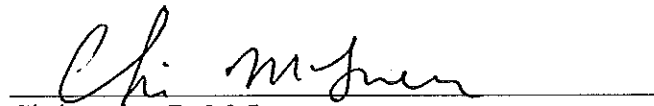
BY CONSENT:

  
\_\_\_\_\_  
Joseph C. Kinsland  
191 Sunset Hts  
Canton, North Carolina 28716

6-28-18  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

7-3-2018  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

7/3/2018  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of July, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY: \_\_\_\_\_

Chairman



STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-057(B)

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

LOUIS PEELE, )

Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Louis Peele, employee of Select Source, Respondents.

1. At all times relevant hereto, Respondent, Louis Peele the licensed pesticide dealer for Select Source in Middlesex, North Carolina and held Pesticide Dealer License No. 037-3196.
2. On June 6, 2017, Complainant's Inspector Brad Boyd, made a routine inspection at JRM, Inc., located at 8491 North NC Hwy 150, Clemmons, North Carolina.
3. During the inspection, Complainant's Inspector Boyd noticed several Restricted Use Pesticides ("RUPs") in JRM, Inc.'s possession. No employee with JRM, Inc. held a valid pesticide dealer or applicator license/certificate. Complainant's Inspector Boyd was informed JRM, Inc. purchased the products from Select Source
4. On June 23, 2017, Complainant's Inspector, Page Eppele, visited Select Source located at 10025 US 264 Alt, Middlesex, North Carolina.
5. During the visit at Select Source, Complainant's Inspector obtained records confirming RUPs were sold to JRM, Inc. during the years of 2015 through 2017 in which JRM, Inc. was not properly licensed to purchase these products.
6. The labels on these RUPs indicate:

RESTRICTED USE PESTICIDE  
For retail sale to and use only by certified applicators.....



7. Under N.C.G.S. § 143-450(b), "Each pesticide dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use or application of pesticides."

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(5) For any person to distribute, sell or offer for sale any restricted use pesticide to any dealer who does not hold a valid North Carolina Pesticide Dealer License.

N.C.G.S. § 143-451

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;
- (5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;
- (13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 NCAC 09L .1302

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations may result in the denial, suspension, or revocation of a pesticide dealer license and/or a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. § 523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

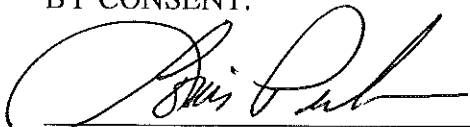
11. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

12. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

13. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

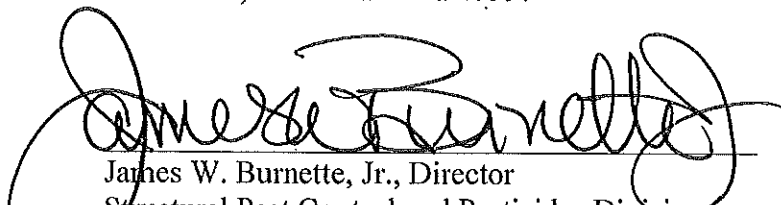
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



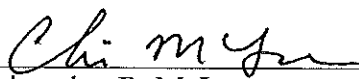
Mr. Louis Peele  
Select Source  
10025 US 264 Alternate  
Middlesex, North Carolina 27557

5/23/18  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

5/30/2018  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

5/30/18  
Date

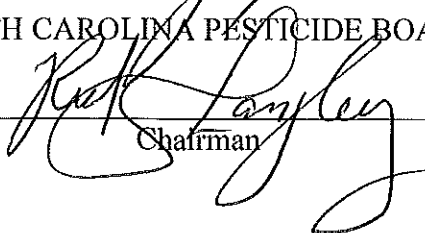
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APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of July, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:



Chairman



2017-57B

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Louis Peele,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement with discussion.

Settlement conference was held with Mr. Louis Peele.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

BENNIE R. WHITEHURST,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-070

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Bennie R. Whitehurst, Respondent.

1. At all times relevant hereto, Respondent held Private Pesticide Applicator Certification Number 038-79136.
2. On June 29, 2017, Complainant's Inspector William B. Dunn, Mr. Norman Harrell, Wilson County Agricultural Extension Director, and Pat Farquhar, Eastern District NCDA&CS Pesticide Section Supervisor met with Mr. Timothy G. Shelton at one of his tobacco fields. The field in question is a 32-acre tobacco field. They inspected the tobacco and observed twisted, cupped, and curled leaves. All that were present agreed that the symptoms on the tobacco were consistent with the damages that Auxin herbicides cause when it contacts tobacco.
3. Respondent was also present on June 29, 2017. Respondent farms a field of soybeans adjacent to and west of the tobacco field in question. According to Respondent, he had applied Engenia herbicide to the soybeans adjacent to the tobacco field. Respondent also agreed that the tobacco was showing symptoms typical of Auxin damage.
4. Also on June 29, 2017, Ms. Brianne Reeves and Ms. Kelly Liberator, BASF representatives, inspected the tobacco field and its damage. Ms. Reeves and Ms. Liberator said that the tobacco showed symptoms of damage from Auxin herbicides. Ms. Liberator said that the symptoms were due to spray drift and not volatilization.

5. While at the farm on June 29, 2017, Mr. Shelton stated he did not want to file a formal complaint. He stated that he and Respondent were going to try and work out an agreement for the damages to his tobacco. Respondent agreed that he would contact his insurance agent to access the situation.
6. However, on July 12, 2017, Mr. Shelton contacted NCDA&CS and filed an official complaint. Complainant's Inspector Dunn revisited the field in question again on this date, and the tobacco displayed the same damages of twisting, curling, and cupping leaves. The distance between Respondent's soybean field and Mr. Shelton's tobacco field was measured and determined that the closest point was 136 feet.
7. According to Mr. Shelton, the tobacco in this field is PRC (pesticide residue clean) tobacco which is produced using minimal amounts and his buyers said they cannot buy this tobacco due to the symptoms of pesticide exposure on it.
8. Mr. Shelton also had some Roundup ready soybeans (non-dicamba tolerant) between the Respondent's soybeans and Mr. Shelton's tobacco. Complainant's Inspector Dunn observed signs of Auxin exposure throughout the entire field. Inspector Dunn collected vegetation samples from the tobacco as well as vegetation and soil samples from Respondent's soybean field.
9. On July 12, 2017, Complainant's Inspector Dunn met with Respondent and discussed his application that he performed to the soybeans next to Mr. Shelton's tobacco field. According to Respondent's records, he applied the Engenia herbicide to his soybean field on June 15, 2017 at 10:22 a.m. Respondent attended the two-hour training course required before using these auxin herbicides. Respondent said the wind was blowing in the opposite direction of the tobacco field, in a westerly direction. Respondent showed Complainant's Inspector Dunn his hand-held anemometer and said that the wind speed that day was below 10 mph. The nozzle tips Respondent used were given to him at the point of sale of the Engenia product. Respondent was unaware that he needed a supplemental and 24(c) labels in order to use the Engenia as an in-crop application and said that he wasn't given them when he purchased it from Southern States in Tarboro. According to Respondent his insurance company had agreed to pay \$80,000 to Mr. Shelton for the damages to the tobacco in his 32-acre field.
10. While Complainant's Inspector Dunn was meeting with Respondent, he took photographs of the nozzle tips that were used on the application to the soybean field in question. These nozzle tips were given to him at point of sale of the Engenia product.
11. On July 12, 2017, Complainant's Inspector Dunn went to the business of Southern States located at 142 Commercial Road in Tarboro, North Carolina. Inspector Dunn spoke with Mr. Ricky Roberson, the manager, and asked if Respondent had purchased some of his pesticides at this location specifically Engenia and Xtendimax. Mr. Roberson provided a sales report for Engenia herbicide that Respondent had purchased from this location. Inspector Dunn told Mr. Roberson that Respondent alleged that he did not receive a SLN (Special Local Need) 24(c) label for the Engenia herbicide from them and informed them that they are required to give the purchasers of Engenia herbicide a copy of the 24(c) labeling for North Carolina when they sell it to be used in this state.

12. Complainant's Inspector Dunn met with Mr. Jeff Creech, manager of Wilson County Farm Supply, and asked if Respondent purchased his pesticides from this location. Mr. Creech said that he had. A sales report of all products Respondent had purchased in 2017 was provided by Mr. Creech. The sale of Xtendimax was shown sold in the sales report.

13. As part of the investigation, Complainant's Inspector Dunn took samples of the non-target area and target area as follows:

Non-Target:

**BD-15** sample consist of approximately 1 pound of tobacco leaves taken from a tobacco field farmed by Timothy G. Shelton. The field is located behind the property of 7363 Hwy 264A in Walstonburg, NC. The GPS coordinates for the sampled site was '35 38 852N '77 45 755W.

Target:

**BD-16** sample consist of approximately 1 pound of soybean leaves taken from a soybean field farmed by Respondent. The field is located behind the property of 7363 Hwy 264A in Walstonburg, NC. The GPS coordinates for the sampled site was '35 38 851N '77 45 779W.

**BD-17** sample consist of approximately 1 pound of soil taken from a soybean field farmed by Respondent. The field is located behind the property of 7363 Hwy 264A in Walstonburg, NC. The GPS coordinates for the sampled site was '35 38 851N '77 45 779W.

14. Laboratory analysis of the samples collected by Complainant's Inspector Dunn revealed the following:

**Lab Results**

	<u><b>5-OH Dicamba</b></u>	<u><b>Dicamba + 3,6-DCSA</b></u>
BD-15 Non-target vegetation, Shelton tobacco	ND	ND
BD-16 Target vegetation, Whitehurst soybean field	ND	ND
BD-17 Target soil, Whitehurst soybean field	ND	BQL<0.07 ppm

15. The pesticides involved in this investigation was identified as:

Engenia Herbicide (dicamba), EPA Reg. No. 7969-345, a growth-regulating broadleaf herbicide, Class III, Caution.

Engenia FIFRA Section 24(c) Special Local Need FOR DISTRIBUTION AND USE ONLY IN THE STATE OF NORTH CAROLINA, EPA Reg. No. 7969-345, EPA SLN No. NC-170002.

Engenia Herbicide Supplemental Label, EPA Reg. No. 7969-345



16. The label statement of the pesticides identified in the investigation reads as follows:

*Engenia Herbicide FIFRA Section 24(c) label:*

**"Directions For Use ... This label, the Engenia container label, and the Engenia supplemental label for dicamba-tolerant crops must be in the possession of the user at the time of pesticide application.**

*Engenia Herbicide Supplemental Label:*

**"Directions For Use** The supplemental labeling and the entire Engenia™ herbicide container label, EPA Reg. No. 7969-345, must be in possession of the user at the time of application. ... **Spray Drift Management DO NOT** allow herbicide solution to mist, drip, drift, or splash onto desirable **vegetation** because severe injury or destruction to desirable broadleaf plants could result. ... **Sensitive Areas** Maintain a 110 foot buffer when applying this product from the downwind outer edges of the field ... **Non-target Susceptible Plants:** Restrictions and precautions for the protection of non-target susceptible plants. • **DO NOT** apply under circumstances where spray drift may occur to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use or consumption. • **DO NOT** allow contact of herbicide with foliage, green stems, exposed non-woody roots of crops, and desirable plants. • **DO NOT** apply when wind is blowing in the direction of neighboring specialty crops. In addition to the required 110 foot down wind spray buffer, additional protections are required for dicamba sensitive specialty crops. **DO NOT** apply when wind is blowing in the direction of neighboring specialty crops. Specialty crops include, but are not limited to, tomatoes and other fruiting vegetables (EPA Crop Group 8), cucurbits (EPA Crop Group 9), peas, potato, tobacco, flowers, fruit trees, grapes, ornamentals, including greenhouse and shade house grown broadleaf plants."

17. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(4) Operated in a faulty, careless, or negligent manner;

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

18. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-440

(b) The Board may ... require the certification and recertification of private applicators, ... and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; ...

N.C.G.S. § 143-469

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-450(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

19. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 19(d) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 19(d) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

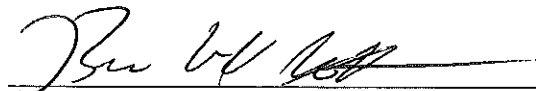
20. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

21. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

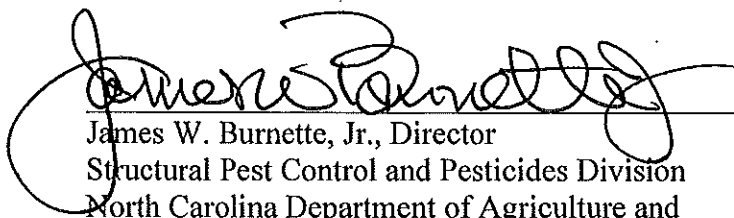
22. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

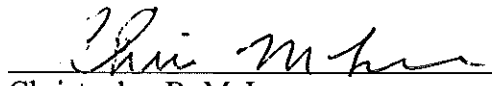
BY CONSENT:

  
Mr. Bennie R. Whitehurst  
PO Box 67  
Conetoe, North Carolina 27819

5/30/18  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

6/13/2018  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

6/11/2018  
Date

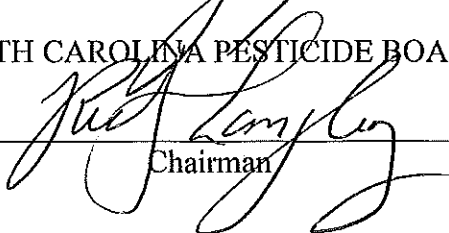
\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of July, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



IR2017-070

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Bennie R. Whitehurst,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Bennie R. Whitehurst, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

RANDY LEE LANIER,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD

File No. IR2017-077

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Randy Lee Lanier, Respondent.

1. At all times relevant hereto, Respondent held a Commercial Pesticide Applicator License Number 026-27709 for Tri-River Lawn Care, Inc. located at 1248 Lee's Chapel Road, Sanford, North Carolina 27330.
2. On July 13, 2017, Complainant's Pesticide Inspector Christopher Smith investigated a pesticide drift complaint from Mr. Joe Frank Sikes of Wadesboro, North Carolina regarding a pesticide application to a cell phone tower station adjacent to his soybean field, which caused herbicide damage.
3. Mr. Sikes informed the pesticide inspector that he rents a field across from a home at 595 Jack's Branch Road, Wadesboro, North Carolina to produce his crops. He also mentioned that the cell phone tower station is operated by Chris Altman of SBA Communications.
4. In Mr. Sikes concerns, he mentioned a possible pesticide spill coming from the corner of the cell tower compound and running out into his soybean field. He stated he noticed the possible pesticide spill earlier towards the end of his wheat crop and the issue has become more noticeable with the current soybean crop.

5. Complainant's Inspector and Mr. Sikes both noted that the soybeans have not survived in the areas of the possible run-off areas and some foliar distortion is visible in the surviving soybeans along the edges of the possible run-off areas.

6. The possible pesticide run-off areas appeared to move down through the fields following the natural slope of the land from the cell tower compound. Damage appeared to be consistent coming from both sides of the cell tower compound consisting of non-emerged soybeans in the wettest portion of the run-off area and distorted soybean foliage along the edges of that same run-off area.

7. Complainant's Inspector contacted the cell tower manager of SBA Communications, Chris Altman. Mr. Altman stated that they only maintain a 10ft buffer that is mowed and no herbicide applications are made at any of their towers. Mr. Altman also stated the gravel area inside of the fenced compound is layered on top of a weed barrier, which does not need spray. Additionally, Mr. Altman told Inspector Smith that the property is maintained by Respondent of Tri-River Lawn Care.

8. Complainant's Inspector contacted Respondent to discuss Mr. Sikes concerns. Respondent stated that he had made only one application on March 7, 2017 at this location. The products used were Method, Escort, Esplanade, and Rodeo. These herbicides were packed in a custom blend Aquimix by CWC Chemicals in Cloverdale, Virginia and delivered to Tri-River Lawn Care.

9. Complainant's Inspector contacted CWC Chemical Company to obtain the product information, EPA Reg. No., and rates for the products used. The pesticides involved in this investigation were identified as:

Method 240 SL: Potassium salt of aminocyclopyrachlor;  
EPA Reg No. 432-1565, Class III Caution

Escort XP: Metasulfuron Methyl;  
EPA Reg No. 432-1549, Class III Caution

Rodeo: Glyphosate; EPA Reg No. 62719-324, Class III Caution

Esplanade 200 SC: Indaziflam;  
EPA Reg No. 432-1516, Class III Caution

10. On July 17, 2017, Complainant's Inspector collected soil samples as follows:

- CS-050- Soil sample taken off the far eastern corner of the cell tower in the field
- CS-051- Soil sample taken off the far eastern corner of the cell tower in the field
- CS-052- Soil sample taken off the far eastern corner of the cell tower in the field
- CS-053- Soil sample taken off the far eastern corner of the cell tower in the field
- CS-054- Soil sample taken off the far eastern corner under fence of target area
- CS-055- Soil sample taken off the northern corner of the cell tower in the field
- CS-056- Soil sample taken off the northern corner under the fence of target area

11. Laboratory analysis of the samples collection on July 17, 2017, revealed the following:

Sample No	Type	Type	Location	aminocyclopyrachlor	Indaziflam	Metsulfuron Methyl
CS-50	Soil	Nontarget	Bean field	0.005ppm	0.002ppm	ND
CS-51	Soil	Nontarget	Bean field	0.005ppm	ND	ND
CS-52	Soil	Nontarget	Bean field	0.019ppm	0.015ppm	ND
CS-53	Soil	Nontarget	Bean field	0.004ppm	0.012ppm	ND
CS-54	Soil	NonTarget	Bean field	0.002ppm	0.001ppm	ND
CS-55	Soil	NonTarget	Bean field	0.013ppm	0.6ppb	ND
CS-56	soil	target	Cell station	ND	0.4ppb	ND

12. The label statements of the pesticide identified in the investigation read as follows:

**Method 240SL label states:**

- Do not apply this product in areas where the roots of desirable trees and/or shrubs may extend unless injury or loss can be tolerated.  
Root zone areas of desirable trees or vegetation are affected by local conditions and can extend well beyond the tree canopy.
- Do not apply this product if site-specific characteristics and conditions exist that could contribute to movement and unintended root zone exposure to desirable trees or vegetation, unless injury or loss can be tolerated.
- Do not make applications when circumstances favor movement from treatment site.
- Do not apply METHOD 240SL HERBICIDE to roadsides or other non-crop areas during periods of intense rainfall or where prevailing soils are either saturated with water or of a type through which rainfall will not readily penetrate as this may result in off-site movement.
- Do not apply or otherwise permit this product or sprays containing this product to come into contact with any non-target crop or desirable vegetation.

**IMPORTANT PRECAUTIONS**

- Certain species may, in particular, be sensitive to low levels of METHOD 240SL HERBICIDE including but not limited to conifers (such as Douglas fir, Norway spruce, ponderosa pine and white pine), deciduous trees (such as aspen, Chinese tallow, cottonwood, honey locust, magnolia, poplar species, redbud, silver maple, and willow species), and ornamental shrubs (such as arborvitae, burning bush, crape myrtle, forsythia, hydrangea, ice plant, magnolia, purple plum and yew).
- Injury or loss of desirable trees or vegetation may result if METHOD 240SL HERBICIDE is applied on or near desirable trees or vegetation, on areas where their roots extend, or in locations where the treated soil may be washed or moved into contact with their roots. Consider site-specific characteristics and conditions that could contribute to unintended root zone exposure to desirable trees or vegetation. Root zone areas of desirable trees or vegetation are affected by local conditions and can extend beyond the tree canopy. If further information is needed regarding root zone area, consult appropriate state extension service, professional consultant, or other qualified authority.



- Injury to or loss of desirable trees or vegetation may result if equipment is drained or flushed on or near these trees or vegetation or on areas where their roots may extend or in locations where the chemical may be washed or moved into contact with their roots.
- Applications made where runoff water flows onto agricultural land may injure or kill crops such as but not limited to sugar beets, potatoes, tomatoes, tobacco, soybeans, field beans, alfalfa, grapes, peaches, almonds, and vegetables.
- Caution is advised when using this product in areas where loss of desirable conifer or deciduous trees and/or shrubs, as well as other broadleaf plants, including but not limited to legumes and wild flowers, cannot be tolerated. Without prior experience, it is necessary that small areas containing these plants be tested for tolerance to METHOD 240SL HERBICIDE and its soil residues before any large scale spraying occurs.
- Low rates of METHOD 240SL HERBICIDE can kill or severely injure most crops. Following a METHOD 240SL HERBICIDE application, the use of spray equipment to apply other pesticides to crops on which METHOD 240SL HERBICIDE is not registered may result in their damage. The most effective way to reduce this crop damage potential is to use dedicated mixing and application equipment.
- Leave treated soil undisturbed to reduce the potential for METHOD 240SL HERBICIDE movement by soil erosion due to wind or water.
- In the case of suspected off-site movement of METHOD 240SL HERBICIDE to cropland, soil samples should be quantitatively analyzed for METHOD 240SL HERBICIDE, or any other herbicide which could be having an adverse effect on the crop, in addition to conducting the field bioassay.

**Espanade 220 SL Label states:**

- Do not apply or otherwise permit this product or sprays containing this product to come into contact with any non-target crop or desirable plants.
- Do not make applications when circumstances favor movement from treatment sites.

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.


15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(c) of this Agreement.

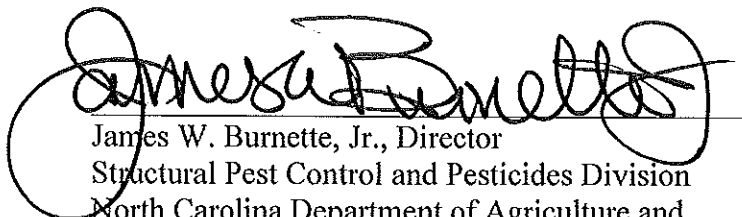
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
  - (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.
16. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.
17. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.
18. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

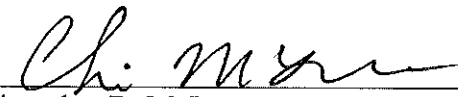
BY CONSENT:

  
Mr. Randy Lee Lanier  
Tri-River Lawn Care, Inc.  
1248 Lee's Chapel Road  
Sanford, North Carolina 27330

5-26-18  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

6-5-2018  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

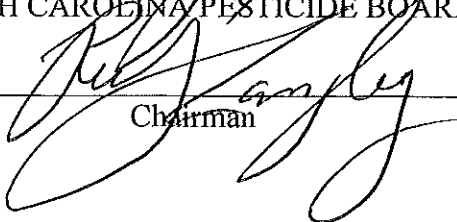
6/6/2018  
Date

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APPROVED AND ORDERED FILED,

this the 10<sup>th</sup> day of July, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Randy Lanier,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement with discussion.

Settlement conference was held with Mr. Randy Lanier.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-031

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JOHN J. ODOM,

Respondent.

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and John J. Odom, Respondent.

1. At all times pertinent to this matter, Respondent held Private Pesticide Applicator Certification No. 038-81972.
2. On May 12, 2017, Complainant's Pesticide Inspector received a complaint from Angela Faison alleging that a neighboring pesticide application had drifted onto her property and caused damage.
3. On May 12, 2017, Complainant's Inspector met with Ms. Faison at her property on Alum Springs Road in Mount Olive, North Carolina. Ms. Faison showed Complainant's Inspector various trees, shrubs and grass on her property that appeared to have leaf tissue bleaching. Ms. Faison told Complainant's Inspector that the bleaching was caused by spray drift from the field directly behind her home. Ms. Faison noticed the leaves turning white on approximately May 10, 2017. Complainant's Inspector asked Ms. Faison if she has used any herbicides on her property and said that she has spot sprayed small amounts of roundup on her driveway to kill weeds in the cracks with a hand-held sprayer.
4. Mrs. Faison was concerned the health consequences of long term exposure to pesticide drift. Complainant's Inspector provided her contact information for Environmental Toxicologist, John Allran and State Occupational Health Nurse Consultant, Sheila Higgins.

5. While Complainant's Inspector was viewing plants in Mrs. Faison's yard, her neighbors, George Knowles and Nancy Haney, with adjoining properties on both sides of the Faison property, came out and met Complainant's Inspector. Mr. Knowles said the only pesticide he has used on his property this year is roundup applied to his dry ditch with a small hand held sprayer. Ms. Haney said that she has spot sprayed a few small spots with roundup using a hand-held sprayer early in the season.

6. On May 12, 2017, Complainant's Inspector collected three vegetation samples and one soil sample from the Ms. Faison's property. Inspector Merritt also collected a vegetation and a soil sample from the target field. The samples collected were:

JM-019 - Vegetation sample was collected from the non-target area. Vegetation sample was collected from a rose bush at the northeast corner of the Faison home located 142 ft. from the Odom/Faison property line. Leaves and branches were collected from a 2-3 sq. ft. area.

JM-020 - Vegetation sample was collected from a wild grapevine growing in the non-target Faison yard. The sample site was located 47 ft. north of the Odom/Faison property line and 50 ft. west of Knowles/Faison property line in a 2-3 sq. ft. area.

JM-021 - Soil sample was collected from the same area as JM-020 in the non-target area. Soil was collected from the top 1-2 inches of soil in a 2-3 sq. ft. area.

JM-022 - Vegetation sample was collected from the non-target area. Sample site was a tree located 13 ft. north of the Odom/Faison property line and 50 ft. west Knowles/ Faison property line. Leaves and stems were collected from the tree in a 2-3 sq. ft. area.

JM-023 - Vegetation samples was collected from weeds in the target field. Sample site was located 40 ft. south of the Odom/Faison property line. Sample was collected from a 2-3 sq. ft. area.

JM-024 - Soil sample was collected from the same area as JM-023 in the target area. Sample was collected from the top 1-2 inches of soil in a 2-3 sq. ft. area.

7. On May 15, 2017, Complainant's Inspector met with Respondent and explained the complaint and the location of the incident. Respondent said that he is growing watermelons on the 100-acre field in question.

8. Respondent said that he has a treated the field on April 14, 2017 with a tank mix of Command 3ME and Gramoxone SL 2.0 herbicides. Respondent provided Complainant's Inspector with his application records. Respondent's application record showed the wind direction and speed to be WSW at 3.5 mph, which is towards Ms. Faison's property.

9. As part of the investigation, Dr. Alan York, Professor Emeritus, North Carolina State University, Crop and Soil Sciences, looked at the photographs in this case and stated, "I have reviewed the Angela Faison investigation (IR 2017-031), including the photos taken by Jimmy Merritt. To a reasonable degree of scientific certainty, the injury symptoms on the various plants were caused by clomazone (Command herbicide)."

10. Laboratory analysis of the samples collected by Complainant's Inspector revealing as follows:

		<u>Clomazone</u>	<u>Paraquat</u>
JM-19	Non-target rose bush vegetation, Faison yard	ND	ND
JM-20	Non-target soil, grape vegetation, Faison yard	0.032 ppm	ND
JM-21	Non-target soil, Faison yard	0.016 ppm	ND
JM-22	Non-target soil, tree vegetation, Faison yard	0.173 ppm	BQL<0.750 ppm
JM-23	Target vegetation, Respondent watermelon field	0.255 ppm	3.43 ppm
JM-24	Target soil, Respondent watermelon field	0.350 ppm	4.64 ppm

11. The following pesticide was involved in this investigation:

Command 3ME Microencapsulated Herbicide (clomazone), EPA Reg. No. 279-3158, a selective, preplant-incorporated herbicide, Class III, Caution.

12. Label Statement for Command *3ME Microencapsulated Herbicide* reads:

**ENVIRONMENTAL HAZARDS ...** Do not apply when weather conditions favor drift from the area treated. ... **SPECIAL PRECAUTION** Off-site movement of spray drift or vapors of Command 3ME herbicide can cause foliar whitening or yellowing of some plants. ... **SPRAY DRIFT PRECAUTION ...** Do not apply when weather conditions favor drift.

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143 456(a) (2), (4) and (5)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this article;



Operated in a faulty, careless, or negligent manner;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license or certification and/or a civil penalty, which may be assessed by the Board as follows:

N.C.G.S § 143-440 (b)

The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C.G.S. § 143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29) a only for willful violations.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(c) and waives said right by consenting to the terms of this Agreement.

- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(c) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

16. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

17. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

18. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

John J. Odom  
John J. Odom  
Odom Farms  
4990 N. NC Hwy 111  
Seven Springs, North Carolina 28365

5/5/18  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

5/14/2018  
Date

Chi McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

5/15/2018  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of June, 201

NORTH CAROLINA PESTICIDE BOARD

BY:

Paul Langley  
Chairman



2017-031

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

John J. Odom,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-057(A)

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
JRM, INC., )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and JRM, Inc., Respondents.

1. At all times relevant hereto, Respondent, JRM, Inc., was a corporation registered to do business in the State of North Carolina did not have an employee that held an active pesticide dealer's license.
2. On June 6, 2017, Complainant's Inspector Brad Boyd made a routine inspection at JRM Inc., located at 8491 North NC Hwy 150, Clemmons, North Carolina.
3. During the inspection of the pesticide storage, Complainant's Inspector met with Ms. Sandra Monneyham, and observed several Restricted Use Pesticides ("RUP"). Ms. Monneyham verified no one with Respondent held a valid pesticide dealer's license. Several products were placed on Stop Sale, including:

Chlorpyrifos (chlorpyrifos), EPA Reg. No. 1971-520, an organophosphate insecticide, Class III, Caution

BIFEN G/N 7.9F Select (Bifenthrin) EPA Reg No. 89442-24,

Atrazine 4L EPA Reg No: 19173-11,

Abamectin 0.15 EC Select EPA Reg No: 89442-20,

Lambda Select EPA Reg No: 86869-5.

4. The label statements for these RUPs states:

RESTRICTED USE PESTICIDE  
For retail sale to and use only by certified applicators.....

5. Sales invoices from Respondent evidenced sales of RUPs to individuals that did not hold a valid pesticide license or private applicator certification. Additionally, Respondent did not have the required documentation of the name of the purchasing certified applicator or license holder, the purchaser's license or certification number, the expiration date of the purchaser's license or certification, or the EPA number on many RUP sales. Furthermore, Respondent did not have the required pre-fire plan approved by the local fire department as required.

6. Ms. Monneyham was instructed how to obtain a license and informed of other regulations Respondent was not in compliance with such as developing a pre-fire plan and the requirements for documenting sales of restricted pesticides.

7. Since the time of this investigation, Ms. Mooneyham has obtained a Pesticide Dealer License (No. 037-4471).

8. Complainant's Inspector was told JRM, Inc. received their products from Select Source located in Middlesex, North Carolina.

9. On June 23, 2017, Complainant's Inspector, Page Eppele, went to Select Source at the location of 10025 US 264 Alt., Middlesex, North Carolina. While there, Complainant's Inspector obtained all of the records from Select Source regarding RUPs that were sold to Respondent during the years of 2015 through 2017.

10. The sales representative for Select Source was Louis Peele, who holds a valid Pesticide Dealer License (No. 037-3196).

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-451

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

- (4) Failed to pay the original or renewal license fee when due, and continued to sell restricted use pesticides without paying the license fee, or sold restricted use pesticides without a license;
- (5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;
- (13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

N.C.G.S. § 143-448

(a) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this Part. A separate license and fee shall be obtained for each location or outlet from which restricted use pesticides are distributed, sold, held for sale, or offered for sale.

N.C.G.S. § 143-443

(b) It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

02 NCAC 09L .0503

(a) The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.

02 NCAC 09L .1302

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

02 NCAC 09L .1305

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (3) name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;



13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Two Thousand Four Hundred Dollars (\$2,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Two Thousand Four Hundred Dollars (\$2,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Two Thousand Four Hundred Dollars (\$2,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card;
- (7) EPA registration number

02 NCAC 09L .1905

(f) The person responsible for each pesticide storage facility shall also be responsible for the following:

- (1) compliance with all appropriate state and local fire codes and building codes and with all applicable state environmental laws and regulations;
- (2) development of a prefire plan for the storage facility. Such plan shall be a description of the facility's plans and procedures for management of fires involving pesticides. A suggested prefire plan format is the publication, "Pre-Planning and Guidelines for Handling Agricultural Fires," reprinted by the National Agricultural Chemicals Association:
  - (A) one copy of the plan approved by the fire department and/or emergency services office having jurisdiction shall be maintained in the office of the storage facility for inspection by the Board;
  - (B) one copy of the plan shall be filed with the fire department and/or emergency services office having jurisdiction;
  - (C) a request shall be made in writing to the local fire department and/or emergency services office having jurisdiction for no less than an annual inspection of the facility.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations may result in the denial, suspension, or revocation of a pesticide license and/or a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

16. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

James R. Merritt  
Mr. James R. Merritt (Registered Agent)  
on behalf of JRM, Inc.  
8491 North NC Hwy 150  
Clemmons, North Carolina 27012

5-9-2018

Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

5-15-2018

Date

Chris McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

5/16/2018

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 12<sup>th</sup> day of June, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY: Paul Taylor

Chairman



2017-57A

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Sandra Mooneyham JRM Inc,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-049A

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

HOBART K. SANDERSON, JR., )

Respondent. )

SETTLEMENT AGREEMENT

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PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Hobart K. Sanderson, Jr., Respondent.

1. At all times relevant hereto, Respondent was an unlicensed private applicator farming at Sanderson Farms in Kinston, North Carolina.
2. On July 14, 2016, Complainant's Inspector John Colborne met Mr. Kyle Hardy at his farm in response to a complaint he had filed regarding damage by drift of paraquat from a nearby soybean field. The corn field was a 12 acre corn field, located off of Copeland Farm Road, which is adjacent to the Sanderson Farm's soybean field.
3. On July 14, 2016, Complainant's Inspector also met with Respondent, who is the owner of the field in question. Respondent claimed to be responsible for the application and associated drift of the Helmquat 3SL Herbicide on July 8, 2016.
4. Respondent stated that his relative, Mr. Joshua Sanderson, was working under his supervision at the time of the incident. On July 14, 2016, Complainant's Inspector also met with Mr. Andrew Sanderson, who stated that his relative, Mr. Joshua Sanderson, had applied Helmquat 3SL Herbicide and Valor Herbicide to the soybean field in question on July 8, 2016 and Valor Herbicide on July 12, 2016.

5. While on the Sanderson property, Complainant's Inspector reviewed the Helmquat 3SL Herbicide label and determined it was a restricted-use pesticide. Neither Respondent, nor anyone else associated with Sanderson Farms, was certified as a private applicator at the time of the purchase or use of the Helmquat 3SL Herbicide. This herbicide was purchased from Helena Chemical Company in Kinston, North Carolina.

6. At the time of the application, Respondent's Private Pesticide Applicator License was inactive as of December 31, 2015.

7. On July 14, 2016, Complainant's Inspector met with Mr. David J. Dawson, manager, Helena Chemical Company in Kinston. Mr. Dawson provided an invoice dated July 6, 2016, confirming the purchase of a 30-gallon container of Helmquat 3SL Herbicide that was signed by Mr. Joshua Sanderson under an account of an unlicensed individual named Mr. JC Howard.

8. Only July 14, 2016, Complainant's Inspector noted that the corn adjacent to the Sanderson soybean field had symptoms consistent with significant herbicide injury over 100' feet into the corn field, with the most severe injury adjacent to the soybean field.

9. Complainant's Inspector determined the following pesticide was involved:

Helmquat 3SL Herbicide (paraquat dichloride), EPA Reg. No. 74530-48, a bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison

10. The label statements obtained by Complainant's Inspector for this pesticide read as follows:

**RESTRICTED USE PESTICIDE**

Due to Acute Toxicity

For Retail Sale and Use Only by Certified Applicators or Persons Under  
their Direct Supervision and Only for Those Uses Covered by the  
Certified Applicator's Certification.

ENVIRONMENTAL HAZARDS ... Do not apply under conditions  
involving possible drift to food, forage, or other plantings that might be  
damaged or the crops thereof rendered unfit for sale, use, or consumption.  
Do not apply when weather conditions favor drift from treated areas

11. On July 14, 2016, Complainant's Inspector photographed the damaged corn field and took the following vegetation and soil samples:

Sample #027 – Vegetation sample: Corn leaves taken in Hardy corn  
field approximately 100' feet north of Sanderson soybean field.

Sample #028 – Vegetation sample: Corn leaves taken in Hardy corn  
field approximately 50' feet north of Sanderson soybean field.

Sample #029 – Soil sample: Soil sample taken 50' feet south of  
Hardy corn field in Sanderson soybean field.

12. Laboratory analysis of the samples collected by Complainant's Inspector revealed the following:

Sample	Flumioxazin	Paraquat
27 (non-target)	ND	ND
28 (non-target)	ND	27.9 ppm
29 (target)	0.316 ppm	1.56 ppm

13. On July 19, 2016, Inspector Colborne met with Mr. Jacob P. Morgan, NCSU Cooperative Extension Field Crops Agent and he inspected the photographs taken of the corn field and stated, "the corn field appears to have Paraquat Herbicide injury from draft. There is little to no disease or insect damage to the corn. There is significant herbicide injury to the corn foliage, and it will affect the corn yield. The corn herbicide injury is most severe adjacent to the soybean field, which is located to the south."

14. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.



15. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143.440

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder.

N.C.G.S. §143-469

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

16. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 16(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 16(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.


16. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

17. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

18. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

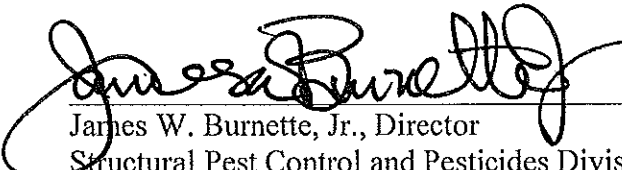
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

 (THANK YOU)  
\_\_\_\_\_  
Mr. Hobart K. Sanderson, Jr.  
Sanderson Farms  
1830 Guinea Town Road  
Kinston, North Carolina 28501


2-3-2018

Date

\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

2/12/2018

Date

\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

2-9-2018

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of March, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY: \_\_\_\_\_

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Hobart K. Sanderson, Jr.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Hobart K. Sanderson, Jr., Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-049B

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant, )

v. )

DAVID J. DAWSON, )

Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and David J. Dawson, Respondent.

1. At all times relevant hereto, Respondent was the manager of Helena Chemical Company in Kinston, North Carolina and held Pesticide Dealer License No. 037-2408.
2. On July 14, 2016, Complainant's Inspector John H. Colborne investigated a pesticide drift complaint filed against Sanderson Farms in Kinston, North Carolina. During the investigation, Complainant's Inspector met with Mr. Hobert Kennedy Sanderson, Jr., the owner of Sanderson Farms. In speaking with Mr. Sanderson, Complainant's Inspector learned that Mr. Sanderson's son, Joshua Sanderson, had purchased and applied Helmquat 3SL Herbicide, a Restricted Use Pesticide ("RUP") to their soybean field. No one associated with Sanderson Farms was certified as a private applicator at the time of the purchase or use of the Helmquat 3SL Herbicide.
3. Complainant's Inspector then met Respondent at Helena Chemical Company in Kinston, North Carolina. Respondent provided an invoice dated July 6, 2016, confirming the purchase of a 30-gallon container of Helmquat 3SL Herbicide from Helena Chemical Company, that was signed by Joshua Sanderson under an account of an unlicensed applicator named Mr. J C Howard.
4. On July 19, 2016, Complainant's Inspector met with the account holder, Mr. Howard. Mr. Howard is not licensed as a private applicator in North Carolina. Mr. Howard stated that he does not farm with Sanderson Farms, he is not involved in any sales of RUPs by Helena Chemical Company, and he has not given Sanderson Farms permission to purchase RUPs on his account.

5. Complainant's Inspector determined the following pesticide was involved:

Helmquat 3SL Herbicide (paraquat dichloride), EPA Reg. No. 74530-48, a bipyridylum, contact, non-selective herbicide, Class I, Danger-Poison

6. The label statements obtained by Complainant's Inspector for this pesticide read as follows:

RESTRICTED USE PESTICIDE

Due to Acute Toxicity

For Retail Sale and Use Only by Certified Applicators or Persons Under  
their Direct Supervision and Only for Those Uses Covered by the  
Certified Applicator's Certification.

7. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-451

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(7) Made false or fraudulent records, invoices, or reports;

(10) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;

(13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 NCAC 09L .1302

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

8. Each of the above violations of the North Carolina Pesticide Law and/or Regulations may result in suspension, revocation, or denial of a pesticide license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

9. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand and Four Hundred Dollars (\$1,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand and Four Hundred Dollars (\$1,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand and Four Hundred Dollars (\$1,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 9(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 9(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

10. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

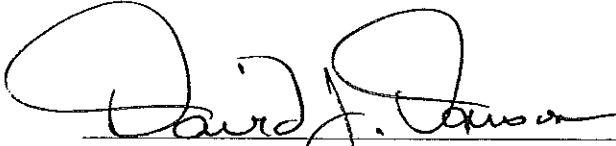
11. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

12. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.



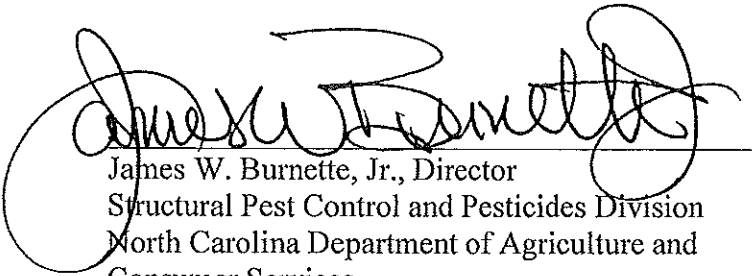
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



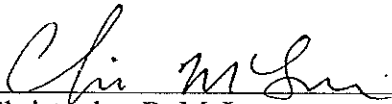
Mr. David J. Dawson  
Helena Chemical Company  
842 Will Baker Road  
Kinston, North Carolina 28504

1/10/2018  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-24-2018  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

1/24/2018  
Date

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APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of March, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

David J. Dawson,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

David J. Dawson, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-061

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
CHARLES RAPHAEL TYNER, JR., )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Charles Raphael Tyner, Jr., Respondent.

1. At all times relevant hereto, Respondent held Private Pesticide Applicator Certification Number 038-75690.
2. On August 9, 2016, Mr. Corey Shook filed a complaint alleging that pesticide drift damaged his pine planation in Murfreesboro, Hertford County, North Carolina.
3. On August 10, 2016, Complainant's Pesticide Inspector, Christopher H. Hassell, visited the site of the complainant and was told by Mr. Shook that he first noticed damage to his pines on June 18, 2016. Mr. Shook stated he had not sprayed anything on the pines or on his property.
4. On August 10, 2016, Complainant's Inspector took photographs and collected soil and vegetation samples from the damaged non-target pine plantation and the target soybean field.
5. Complainant's Inspector Hassell then identified Respondent as the owner responsible for the neighboring soybean field.
6. Respondent initially told Complainant's Inspector that he applied Roundup Herbicide and Reflex Herbicide to the soybean field sometime in early June, but that did not have an exact date. Respondent later told Complainant's Inspector that the soybean field at issue was actually sprayed with Liberty Herbicide and not Roundup or Reflex herbicides as initially reported. The mix-up

was because when Respondent was first interviewed, he thought the complaint was about a different field until he visited the site and saw the pine tree damage.

7. Respondent did not have an exact date that he sprayed Liberty Herbicide on the soybean field, but stated that it was around the first of June and that it was the only herbicide application made to the soybean field.

8. Respondent admitted that the wind was blowing toward the pine trees when he made the application, but he did not think it was blowing hard enough to make it to the trees. Respondent did not have an estimate as to how hard the wind was blowing. Respondent also stated that he did not doubt that the application damaged the trees, but that it was not intentional and that he would be more careful in the future.

9. Dr. Alan York, Professor Emeritus, North Carolina State University Crop and Soil Sciences, reviewed the case information including the photographs and made the following statement, "To a reasonable degree of scientific certainty, the damage to Mr. Shook's pines was caused by glufosinate."

10. Laboratory analysis of the samples collected by Complainant's Inspector on August 10, 2016 revealed the following:

		<u>Glufosinate- Ammonium Fomesafen</u>	<u>Glyphosate</u>	<u>AMPA</u>	
CH-28	Non-target vegetation, Shook trees and shrubs	BQL<0.667ppm	ND	ND	ND
CH-29	Non-target soil, Shook plantation	ND	ND	ND	ND
CH-30	Target vegetation, Tyner soybean field	BQL<0.300ppm	ND	ND	ND
CH-31	Target soil, Tyner soybean field	BQL <0.020ppm	ND	ND	ND

11. Complainant's Inspector determined the following pesticides were involved:

Liberty Herbicide (glufosinate-ammonium), EPA Reg. No. 264-829, a nonselective, postemergent, contact herbicide, Class II, Warning.

12. The label statements obtained by Complainant's Inspector for this pesticide read as follows:

*Liberty Herbicide:*

**"APPLICATION AND MIXING PROCEDURES ... SPRAY DRIFT MANAGEMENT** ... do not apply when weather conditions, wind speed, or wind direction may cause spray drift to non-target areas. ... For all non-aerial application, wind speed must be measured adjacent to the application site, on the upwind side, immediately prior to application. **SENSITIVE AREAS**

The pesticide must only be applied when the potential for drift to adjacent sensitive areas (e.g., ... non-target crops) is minimal (e.g., when wind is blowing away from the sensitive areas).

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-440

(b)"The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . ."

N.C.G.S. § 143-469

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(d) of this Agreement.
- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

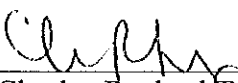
16. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

17. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

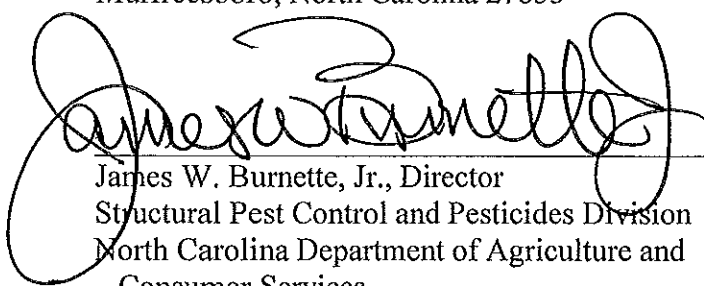
18. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

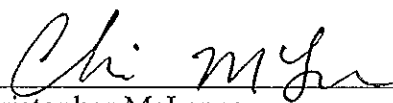
BY CONSENT:

  
Mr. Charles Raphael Tyner, Jr.  
Tyner Farms  
133 Turkey Branch Rd  
Murfreesboro, North Carolina 27855

1-11-18  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-12-2018  
Date

  
Christopher McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

1/12/2018  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of March

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Charles Raphael Tyner, Jr.,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Charles Raphael Tyner, Jr., Respondent  
Patrick N. Farquhar, Eastern Field Manager



STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

THOMAS KEETER,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-069

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Thomas Keeter, Respondent.

1. At all times relevant hereto, Respondent held Private Pesticide Applicator Certification Number 038-84846.
2. On July 12, 2017, at the request of Mr. Chris Braddy, Complainant's Inspector William B. Dunn investigated possible damage to Mr. Braddy's soybean crop. Complainant's Inspector met with Mr. Arthur Whitehead, Halifax County Extension Director, and Mr. Braddy at the first two fields of damaged soybeans located on Hobgood Road, Scotland Neck, North Carolina. Inspector Dunn observed cupping soybean leaves on the plants, which is consistent with Dicamba exposure.
3. Complainant's Inspector asked Mr. Braddy what he had applied to the soybean crop and he said that the soybeans he planted are Liberty Link soybeans and he had only applied Liberty and Synchrony. Mr. Braddy said that he decided not to use the new Auxin tolerant soybeans on his farm. Mr. Braddy had heard that the farmer next to him has used Xtendimax on his soybean crop. The field that the Xtendimax was used by the adjacent farmer is southwest across from Mr. Braddy's field, 75 feet to the closest point. Mr. Braddy first noticed the damage to his soybeans on July 6, 2017.
4. Complainant's Inspector and Mr. Whitehead then inspected the second field of damaged soybeans and observed the same cupping symptoms as seen in the first inspected field. Mr. Whitehead agreed that the soybeans showed symptoms of Dicamba exposure. The second field

is directly adjacent to the field where the framer had supposedly applied Xtendimax and is 41 feet west at its closest point to Mr. Braddy's field. Mr. Braddy told Complainant's Inspector Dunn that Keeter Farming were the growers of the soybeans in the adjacent field.

5. The third field of soybean damage was located on Arthur Cross Road in Scotland Neck, Halifax County, North Carolina. When Complainant's Inspector and Mr. Whitehead inspected the soybeans, and this field as well displayed the same symptoms of cupping and curling, which concluded a symptom of Dicamba exposure. The adjacent soybean field to this third field of Mr. Braddy is also farmed by Keeter Farming. This field is 122 feet at its closest point to Mr. Braddy's field.

6. On July 12, 2017, Complainant's Inspector met with Respondent, one of the owners of Keeter Farming. Mr. Keeter met Inspector Dunn at the fields on Hobgood Road, Scotland Neck, North Carolina.

7. Complainant's Inspector asked Respondent what type of herbicides he had applied to his soybeans and he said he applied the following three chemicals to all three fields, which involved 160 acres of soybeans: Xtendimax, Cornerstone 5 plus, and AG16098 surfactant.

8. Upon interviewing Respondent, Complainant's Inspector found numerous items of issue with the application:

a. Respondent performed an application of Xtendimax herbicide that requires a two-hour training class. Also, he discovered that Respondent did not attend the Auxin training class, nor did any individual on the Keeter farm.

b. According to the label of Xtendimax, nozzle tips must produce very coarse or ultra coarse droplets. Respondent used Teejet 8004 fan spray type nozzle tips on his sprayer, which produce a fine fan type droplet.

c. The Xtendimax product comes with a 24C label in North Carolina which addresses the maximum wind speed the product can be used when sensitive crops are downwind from the product. Respondent did not have a 24C label, nor was he aware of one.

9. Complainant's Inspector obtained an Xtendimax label from Respondent and photographed his application records that he had for the soybean fields, which are adjacent to Mr. Braddy's fields in question.

10. Complainant's Inspector informed Respondent that no more Xtendimax should be applied by their farming operation until at least one individual on the farm has been through the training course for the new Auxin materials.

11. Complainant's Inspector collected samples on the non-target area and the target area as follows:

Non-Target:

**BD-5-** Sample consist of approximately 1 pound of soybean vegetation taken from soybean field farmed by to Chris Braddy. Sample taken adjacent to home at 1673 Hobgood Road Scotland Neck, N.C. The sample was taken 72 feet south from the edge of Hobgood Road and 3 east feet from edge of the access path to the field. Sample co-ordinates '36 03'.437"N '77 21'.999"W Non-Target

**BD-6-** Sample consist of approximately 1 pound of soybean vegetation taken from soybean field farmed by to Chris Braddy. Sample taken on the northside of a home at 1673 Hobgood Road. The Sample was taken 26 feet north of Hobgood Road. '36 03'.452"N '77 22'.011"W Non-Target

**BD-9-** Sample consist of approximately 1 pound of soybean vegetation taken from a soybean field farmed by Chris Braddy. The sample was taken in a field on Arthur Cross Road. The sample was taken 90 feet west from the edge of Arthur Cross Road. Sample co-ordinates '36 03'.574"N '77 22'.498 W. Non-Target

Target:

**BD-7-** Sample consist of approximately 1 pound of soybean vegetation taken from a field farmed by Keeter Farming. Sample was taken 20 feet south from the edge of Hobgood Road and 38 feet west from the edge of the access path to the field. Sample co-ordinates '36 03'.439"W '77 22".016"W Target

**BD-8-** Sample consist of approximately 1 pound of soil taken from a field farmed by Keeter Farming Sample was taken 20 feet south from the edge of Hobgood Road and 38 feet west from the edge of the access path to the field. Sample co-ordinates '36 03'.439"W '77 22".016"W. Target

**BD-10** Sample consist of approximately 1 pound of soybean vegetation taken from a soybean field on Arthur Cross Road farmed by Ketter Farming. Sample was taken 20 feet east from the edge of Arthur Cross Road. Sample co-ordinates '36 03'.596"N '77 22'.497"W Target Sample.

**BD-11** Sample consist of approximately 1 pound of soil taken from a soybean field on Arthur Cross Road farmed by Ketter Farming. Sample was taken 20 feet east from the edge of Arthur Cross Road Sample co-ordinates '36 03'.596"N '77 22'.497"W Target Sample.

12. Laboratory analysis of the samples collection on July 12, 2017, revealed the following:

Lab Results

	<u>5-OH Dicamba</u>	<u>Dicamba + 3,6-DCSA</u>
BD-05 Non-target vegetation, Braddy soybeans (Hobgood Rd.)	ND	ND
BD-06 Non-target vegetation, Braddy soybeans (Hobgood Rd.)	ND	ND
BD-07 Target vegetation, Keeter soybean field (Hobgood Rd.)	ND	1.96 ppm
BD-08 Target soil, Keeter soybean field (Hobgood Rd.)	ND	0.173 ppm
BD-09 Non-target vegetation, Braddy soybeans (Arthur Cross Rd.)	ND	ND
BD-10 Target vegetation, Keeter soybean field (Arthur Cross Rd.)	ND	0.778 ppm
BD-11 Target soil, Keeter soybean field (Arthur Cross Rd.)	ND	BQL<0.07 ppm

13. The pesticide involved in this investigation was identified as:

XTENDIMAX With VaporGrip Technology (Diglycolamine salt of Dicamba),  
EPA Reg. No. 524-617, a growth-regulating broadleaf herbicide, Class III, Caution.

14. The label statement of the pesticides identified in the investigation reads as follows:

*XTENDIMAX With VaporGrip Technology:*

**"DIRECTIONS FOR USE ... Spray Drift Management** do not allow herbicide solution to mist, drip, drift or splash onto desirable vegetation ... **Controlling Droplet Size ... Nozzle type** Use only spray nozzles that produce very course to ultra course spray droplets ... Do not use conventional flat fan nozzles that produce an excessive amount of driftable fines."

*XTENDIMAX With VaporGrip Technology 24(c) label:*

"This labeling, and all other product labeling authorizing the desired application, must be in the possession of the user at the time of pesticide application. ... **DIRECTIONS FOR USE ...** This labeling must be in the possession of the user at the time of herbicide application. ... **RESTRICTIONS/LIMITATIONS Auxin Herbicides – Best Management Practices:** The producer, certified applicator, or person responsible for the application of this product on cotton or soybeans, postemergence, must attend Auxin Herbicides – Best Management Practices training that is approved by the North Carolina Department of Agriculture and Consumer Services. ... **DO NOT APPLY this product when the wind is blowing toward adjacent dicamba sensitive crops, including but not limited to, tobacco, grapes, watermelon, sweet potato, peanut, pepper, beans, non-dicamba tolerant cotton, and non-dicamba tolerant soybean, commercially grown tomatoes, EPA crop group 8 (fruiting vegetables such as tomato, pepper, eggplant, others) and EPA crop group 9 (cucurbits vegetables such as cantaloupe, cucumber, pumpkin, squash, watermelon, others).**

*XTENDIMAX With VaporGrip Technology Supplemental Label:*

"This supplemental labeling must be in the possession of the user at the time of pesticide application. ... **DIRECTIONS FOR USE** This labeling must be in the possession of the user at the time of herbicide application. ... **SPRAY DRIFT MANAGEMENT** Do not allow herbicide solution to mist, drip, drift or splash onto desirable vegetation because severe injury or destruction to **desirable** broadleaf plants could result. **Controlling Droplet Size ... Nozzle type.** Use only Tee Jet TTI11004 nozzle ... or any other approved nozzle found at [www.xtendimaxapplicationrequirements.com](http://www.xtendimaxapplicationrequirements.com). Do not use any other nozzle ... **PROTECTION OF SENSITIVE AREAS** Maintain a 110 foot downwind buffer ... between the last treated row and closest downwind edge ... **Non-target Susceptible Crops Failure to follow the requirements in this label could result in severe injury or destruction to desirable sensitive broadleaf crops and trees when contacting their roots, stems or foliage.** • Do not apply under circumstances where drift may occur to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use or consumption."

15. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

16. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-440

(b) The Board may ... require the certification and recertification of private applicators, ... and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; ...

N.C.G.S. § 143-469

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G.S. 143-460(29)a only for willful violations.

17. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Five Hundred Dollars (\$1,500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Five Hundred Dollars (\$1,500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Five Hundred Dollars (\$1,500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 17(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 17(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

18. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

19. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

20. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

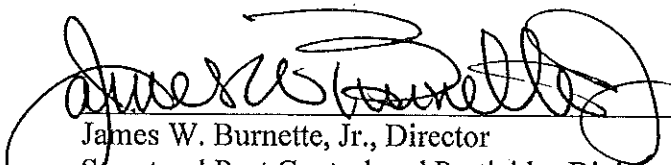
BY CONSENT:



Mr. Thomas Keeter  
Keeter Farming  
1291 Kehukke Church Road  
Scotland Neck, North Carolina 27874

3-7-18

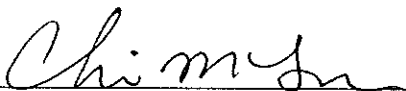
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

3/9/2018

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

3/12/2018

Date

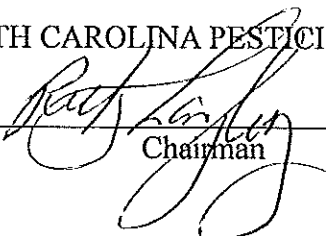
\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of March

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-093

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
DONALD B. HOWARD, )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Donald B. Howard, Respondent.

1. At all times relevant hereto, Respondent operated a residential lawn care business held Commercial Pesticide Applicator License No. 026-10542, which included categories "A": Aquatic Pest Control and "L": Ornamental & Turf Pest control.
2. On October 27, 2016, Complainant's Inspector John Colborne conducted a Restricted Use Pesticide ("RUP") Sales Record Check at Helena Chemical Co. in Kinston, North Carolina which revealed multiple invoices for agricultural pesticides sold to Respondent.
3. The collected invoices displayed purchases made by Respondent of the following: Pilot 4E, Whirlwind, Regent 4SC, and Karmex DF.
4. Three of the four purchased products Mr. Howard applied are listed as RUPs. The label statements shown are:

*Regent 4 SC Insecticide (fipronil), EPA Reg. No. 7969-207, a phenylpyrazole insecticide, Class II, Warning:*

"RESTRICTED USE PESTICIDE ... For retail sale to and use only by Certified Applicators or persons under their direct supervision, and only for those uses covered by the Certified Applicator's certification. ... For In-Furrow Use on Potatoes"

*Whirlwind Insecticide (chlorpyrifos), EPA Reg. No. 62719-220-5905, an organophosphate insecticide, Class II, Warning:*  
"RESTRICTED USE PESTICIDE"

*Pilot 4E Chlorpyrifos Insecticide (chlorpyrifos), EPA Reg. No. 33658-26, an organophosphate insecticide, Class II, Warning:*  
"RESTRICTED USE PESTICIDE"

5. On November 2, 2016, Complainant's Inspector Jimmy Merritt contacted Helena Chemical Co. and spoke to Mr. David Dawson. Mr. Dawson stated the pesticides listed on the invoices were sold by Mr. Jason Dale. Also on this date, Complainant's Inspector spoke with Mr. Dale and he confirmed selling the pesticide items mentioned to Respondent. Mr. Dale stated that Respondent had contacted him by telephone and requested to purchase the pesticides. Mr. Dale stated he confirmed that Respondent's pesticide license was valid in order to complete the sale. Mr. Dale stated he was aware Respondent owned a lawn care business, but that he did not make any pesticide recommendations being he did not know where Respondent was going to apply the products.
6. On November 2, 2016, Complainant's Inspector called Respondent to arrange a meeting to discuss the pesticides purchased from Helena Chemical Co., but Respondent stated he was busy cleaning the debris from Hurricane Matthew for his customers and was out of town. Respondent suggested they meet in a week or two. Later, on the afternoon of November 2, 2016, Complainant's Inspector located Respondent at his residence. Respondent refused to sign the Notice of Inspection ("NOI") and limited his cooperation in answering questions.
7. Respondent confirmed that he did purchase the Pilot 4E, Whirlwind, Regent 4SC, and Karmex DF indicated on the invoice and that he applied those products on pastures and farms for his friends and neighbors; for a fee. Respondent stated the Regent 4SC is used to control fire ants on the pastures he treats. Respondent stated that he uses Whirlwind and Pilot 4E on the pastures to control grubs and other insects. Respondent stated he uses Karmex DF to use around customers' farms to control weeds. Respondent stated he does not use agricultural pesticides not labeled for lawns on his lawn care customer properties, but would not provide any contact information for his customers.
8. Complainant's Inspector explained to Respondent that he was not licensed in the proper category to custom apply pesticides on agricultural land and that he needed to add Ag Pest Plant category to his commercial pesticide license. Respondent stated that he was not aware that he was required to include the category of "O": Agricultural Pest Control – Plant on his commercial pesticide applicator license in order to make these pesticide application.
9. Additionally, Inspector Merritt explained that Regent 4 SC, Whirlwind and Pilot 4E were not labeled for use on pastures.
10. When Complainant's Inspector asked Respondent where he kept his application equipment for treating the pastures, Respondent replied that he borrows sprayers owned by various customers and that all the pesticides listed on the invoices have been used and that he did not have any RUP application records.

11. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443(b)(3)

It shall be unlawful:

For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-452

(a) No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required;

(15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

N.C.G.S. § 143-466

(a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by rule. The records shall be kept for a period of three years from the date of the application of the pesticide to which the records refer, and shall be available for inspection and copying by the Board or its agents at its request.

02 NCAC 09L .0519

(a) . . . Certification is valid only for those uses covered by the certified individual's certification, as defined by Rule .0504 of this Section.

02 NCAC 09L .0523

(a) Individuals desiring to retain certification in more than one pest control category must complete for each category any one of the recertification options described in Rule .0522 of this Section.

02 NCAC 09L .1402

All licensed pesticide applicators, as defined in G.S. 143-460 which includes public operators, utilizing ground equipment shall keep for three years and make available to the commissioner for like period records of all applications of restricted use pesticides showing the following:

- (1) name of licensed pesticide applicator or licensed public operator;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or site(s) treated with pesticide(s);
- (4) name of crop, commodity, or object(s) which was treated with pesticide(s);
- (5) approximate number of acres or size or number of other object(s) treated;
- (6) the year, month, date and the specific time of day when each pesticide application was completed and each day of application shall be recorded as a separate record;
- (7) the brand name of the pesticide(s) and EPA registration number(s);
- (8) amount (volume or weight) of pesticide formulation(s) or active ingredient(s) applied per unit of measure; and
- (9) name(s) of person(s) applying pesticide(s).

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations may result in the denial, suspension, or revocation of a pesticide license and/or a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Five Hundred Dollars (\$1,500.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay the One Thousand Five Hundred Dollars (\$1,500.00) in ten (10) payments of One Hundred and Fifty Dollars (\$150.00) each. Respondent's first payment of One Hundred and Fifty Dollars (\$150.00) shall be

due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining nine (9) installment payments, in the amount of One Hundred and Fifty Dollars (\$150.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due.

- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) As further evidence of good faith and as consideration for this Agreement, Respondent agrees to sign and acknowledges that he has signed, before a Notary Public, a Confession of Judgment in the amount of One Thousand Five Hundred Dollars (\$1,500.00) in favor of Complainant. Respondent further acknowledges and agrees that if Respondent fails to make any payment required under the terms of this Agreement, Complainant may institute an action in Wake County Superior Court, and file the Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law.
  - i. Complainant hereby agrees that, so long as Respondent complies with the terms of this Agreement, Complainant will not institute any civil action against Respondent to collect the sum of money owed pursuant to this Agreement or file the Confession of Judgment Respondent has executed and provided to Complainant. Furthermore, Complainant agrees to file the Confession of Judgment only if Respondent fails to make a payment on time, pursuant to the terms of this Agreement, after giving Respondent notice of his failure to make said payment, and after allowing Respondent three (3) business days to cure his breach by paying the amount due in full.
  - ii. Complainant further agrees that, once Respondent has made his final payment and the Complainant has received One Thousand Five Hundred Dollars (\$1,500.00) in satisfaction of the terms of this Agreement, Complainant shall provide to Respondent a document confirming receipt of payment and releasing Respondent from further liability under this Agreement. Complainant will also provide Respondent with the original Confession of Judgment, unless original Confession of Judgment has already been filed by reason of Respondent's breach of this Agreement.

- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Five Hundred Dollars (\$1,500.00) per the payment installment plan outlined in 13(a), this Agreement will constitute a civil penalty assessment of the Board of One Thousand Five Hundred Dollars (\$1,500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(d) and waives said right by consenting to the terms of this Agreement.
- (e) An action to recover any amount under this settlement agreement shall not relieve any party from any other penalty permitted by law and Respondent's failure to fulfill his agreement to pay One Thousand Five Hundred Dollars (\$1,500.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 143-461(7), 143-464, and 143-469;
- (f) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

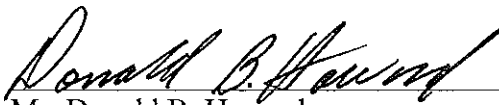
14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

16. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

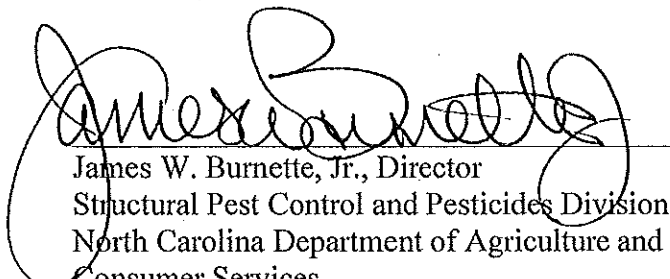
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

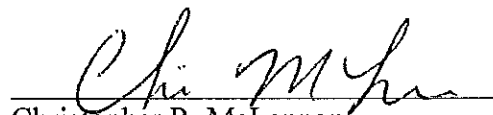


Mr. Donald B. Howard  
425 Jim Grady Road  
Mt. Olive, North Carolina 28365

January 10, 2018  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-26-2018  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

1/25/2018  
Date

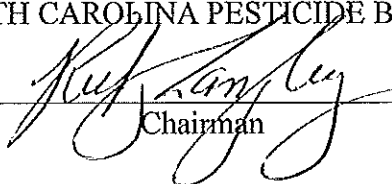
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APPROVED AND ORDERED FILED,

this the 13<sup>th</sup> day of March, 2018

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Donald B. Howard,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Donald B. Howard, Respondent  
Patrick N. Farquhar, Eastern Field Manager



STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2016-080

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

v.

CHRISTOPHER BRIAN WHITE,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Christopher Brian White, Respondent.

1. On August 31, 2016, an anonymous complaint was called into the Raleigh office of the Pesticide Section alleging that Respondent, Mr. Christopher Brian White, was acting as a Pesticide Consultant without being properly licensed by the Pesticide Section.
2. At all times relevant hereto, Respondent held Pesticide Dealer license, No. 037-4297. At no time did Respondent hold a valid Pesticide Consultant License.
3. On August 31, 2016, Complainant's Inspectors Doug Bullard and Jimmy Merritt travelled to Wilmington, North Carolina, to the office location of Red River Specialties, Inc.
4. Prior to this investigation, Respondent has appeared before the Pesticide Board in order to "Discuss Pest Control Consultant Licensing/Education Requirements" at which time the need for a Pesticide Consultant License was clarified.
5. Complainant's Inspector Bullard spoke with Respondent on September 2, 2016, and informed Respondent about the complaint and discussed the duties Respondent performs for Red River Specialties, Inc.
6. As part of the investigation, Complainant's Inspectors looked through the sales records to try and determine if Respondent had been acting as a pesticide consultant. While reviewing the

- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

N.C.G.S. § 143-455

(a) No person shall perform services as a pest control consultant without first procuring from the Board a license. Applications for a consultant license shall be in the form and shall contain the information prescribed by the Board. The application for a license shall be accompanied by a non-refundable annual fee of seventy-five dollars (\$75.00).

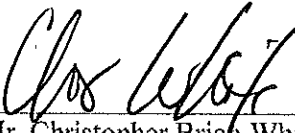
(b) An applicant for a consultant license must present satisfactory evidence to the Board concerning his qualifications for such license. The Board may classify consultant licenses into one or more classifications or subclassifications based upon types of consulting services performed or to be performed. Such classifications and subclassifications may reflect the crops involved in the consulting service, the discipline or training of consultant, the discretion or lack of discretion involved in the consulting service, and the site or location of the service. Each classification and subclassification may be subject to separate testing procedures and requirements, and may be subject to its own minimum standards of training in specialized subject matter from a recognized college or university, or equivalent specialized consulting experience or training. A nonrefundable fee of fifty dollars (\$50.00) shall be charged for the consultant examination, and an additional twenty dollars (\$20.00) shall be charged for each additional specific classification licensure permitted by this subsection. Such examination fee shall be charged in addition to the fees authorized pursuant to subsection (a) of this section or any other provision of Article 4C of Chapter 106 of the General Statutes. Qualifications for licensing may be less stringent if the licensee is restricted to making recommendations contained in publications recognized by the Board as appropriate for a specific consulting classification or subclassification.

(c) Each applicant shall satisfy the Board as to his responsibility in carrying on the business of a pesticide consultant. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide consultant; and his knowledge of the laws and regulations governing the use and sale of pesticides.

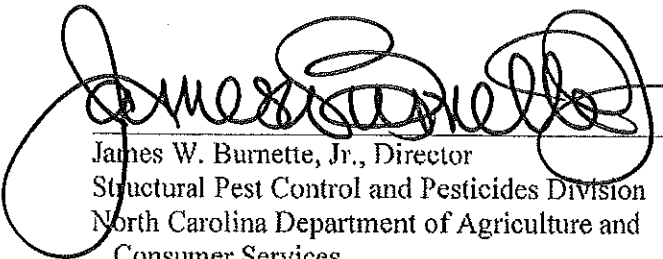
(d) Pest control consultants shall be subject to the same provisions as pesticide applicators concerning penalties for late applications for license, changes of address, transferability of licenses, continuing certification credit requirements, periodic reexamination, and examinations for corporate applicants.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
Mr. Christopher Brian White  
Red River Specialties, Inc.  
1320 Castle Hayne Rd.  
Wilmington, North Carolina 28401

24 Sept 2018  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

9-28-2018  
Date

  
Christopher McLehman  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

9/28/18  
Date

\*\*\*\*\*  
APPROVED AND ORDERED FILED,  
this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman

5



IR2016-080(RSA)

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-026A

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

MICHAEL ALLEN BOSTROM,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Michael Allen Bostrom, Respondent.

1. At all times relevant hereto, Respondent held Aerial Pesticide Applicator License No. 027-877 and was employed with Aero-Tech Helicopters, LLC, PO Box 120, Kingstree, South Carolina 29556.
2. On May 4, 2017, Complainant's Pesticide Inspector Travis Snodgrass investigated a complaint from Mr. Joey Bullin. Mr. Bullin's complaint alleged that a helicopter had made an aerial pesticide application to the wheat field adjacent to his home located at 2640 Woodruff Road, Booneville, North Carolina 27011.
3. Mr. Bullin stated that he was a beekeeper and his location was a register apiary with the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division. According to records with the Department, Mr. Bullin's location is a registered apiary and had been registered with the Department for several years.
4. Mr. Bullin said he felt he should have been contacted regarding the application in case his bees were foraging on sites near the wheat field. He said he would gladly move them if needed. No adverse effects to the bees were documented by Mr. Bullin or Complainant's Inspector.

5. On the morning of May 4, 2017, Complainant's Inspector received a phone call from Respondent of Aero-Tech Helicopters, LLC. Respondent confirmed that, on May 3, 2017, he had sprayed the wheat fields along the Woodruff Road area of Booneville. Respondent said he had seen Mr. Bullin's beehives while he was spraying with the helicopter, but claimed that he was very careful and did not let the application drift near them. Respondent stated he applied Prosaro (Prothioconazole and Tebuconazole; EPA Reg. No 264-862) and an insecticide, Tombstone (Cyfluthrin; EPA Reg. No.34704-978).

6. Respondent was notified that Tombstone Insecticide is highly toxic to bees and requires notification to registered apiaries.

7. Respondent informed Inspector Snodgrass that Crop Production Services (CPS) in Yadkinville, North Carolina had contracted Aero-Tech Helicopters to make the application.

8. Mr. Zeb Saunders of CPS in Yadkinville was interviewed by Complainant's Inspector and he confirmed that he did contract the application at issue and that CPS would pay Aero-Tech Helicopters and then bill the farmer for the service. Mr. Saunders holds Commercial Pesticide Applicator License No. 026-31529 and Pesticide Dealer License No. 037-4306.

9. Mr. Saunders said he did not contact Mr. Bullin regarding the aerial application and was unaware of the regulations requiring him to do so. Inspector Snodgrass provided Mr. Saunders information on Fieldwatch & Beecheck and showed him how to check for apiary locations on the map and how to tell if each location was a state registered apiary. Inspector Snodgrass also provided Mr. Saunders with several pollinator protection brochures and posters for his customers to see and use.

10. Complainant's Inspector collected the following samples as part of the investigation:

TS-10 A non-target vegetation sample taken from weeds around Mr. Bullins apiary that was closest to Woodruff Rd. The sample was taken from weeds and grass in and around the beehives. The sample was located approximately 600 feet away from the wheat field.

TS-11 A non-target vegetation sample taken from a Crape Myrtle located in the front of the house and next to the driveway. The sample site was located approximately 200 feet from the wheat field & 40 feet from the house.

TS-12 A non-target vegetation sample taken from a Holly bush located in the back yard and next to the wheat field on Mr. Bullin's parent's property. The sample site was located approximately 10 feet from the wheat field & 130 feet from the house.

TS-13 A target vegetation sample of wheat taken from inside the wheat field next to Mr. Bullin's parent's property. The sample site was located approximately 100 feet inside the wheat field.

TS-14 A target vegetation sample of wheat taken from inside the back portion of wheat field. The sample site was located approximately 1,100 feet from Mr. Bullin's Apiary.

11. Laboratory analysis of the samples collected by Complainant's Inspector revealed the following:

Sample No	Type	Location	Prothioconazole	Tebuconazole	Cyfluthrin
TS-10	Veg	Bullins apiary	0.034 ppm	ND	ND
TS-11	Veg	Crape Myrtle 40 feet from house	0.031ppm	0.509ppm	ND
TS-12	Veg	Holly Bush 130 feet from house	0.057ppm	1.05ppm	ND
TS-13	Veg	Wheat field	0.190ppm	0.587ppm	ND
TS-14	veg	Wheat field 1100 feet from house	0.413ppm	0.257ppm	ND

12. The label statements of the pesticide identified in the investigation read as follows:

Prosaro Fungicide:

**Spray Drift Directions**

Do not make applications when conditions favor drift beyond the target application area.

Tombstone Helios Insecticide:

**ENVIRONMENTAL HAZARDS**

This product is highly toxic to bees exposed to direct treatment or residues on blooming crops or weeds. Do not apply this product or allow it to drift to blooming crops if bees are visiting the treatment area. Additional information may be obtained by consulting your Cooperative Extension Service.

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1005

(e) No pesticide shall be deposited within 100 feet of any residence.

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2000.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

(b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

(c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

(i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(c) and waives said right by consenting to the terms of this Agreement.

(ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(c) of this Agreement.

(iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs,

including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

16. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

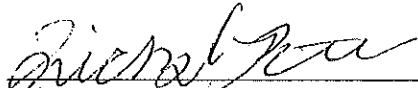
17. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

18. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

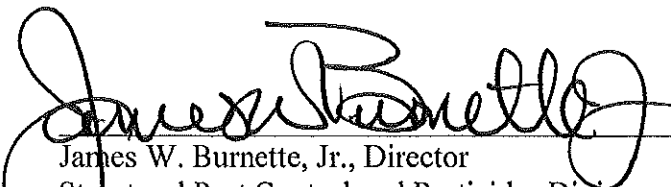


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

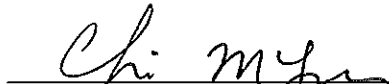
BY CONSENT:

  
\_\_\_\_\_  
Michael Allen Bostrom  
Aero-Tech Helicopters, LLC  
PO Box 120  
Kingstree, SC 29556

07/24/18  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

8/8/2018  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

8/6/2018  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY: 

Chairman



IR2017-026A

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Michael Bostrom,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Michael Bostrom, Respondent

Dwight E. Seal, Western Field Manager



STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JEFFERY L. VUNCANNON,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-27(B)

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Jeffery L. Vuncannon, Respondent.

1. At all times relevant hereto, Respondent held an active Pesticide Dealer License No. 037-3962 for E.E. Vuncannon, Inc. located at 150 Railroad St., Ellerbe, North Carolina.
2. On April 12, 2017, Complainant's North Carolina Pesticide Inspector, Christopher Smith, performed a routine inspection of E.E. Vuncannon, Inc. located in Ellerbe, North Carolina.
3. Complainant's Inspector Smith issued a Notice of Inspection upon his arrival at E.E. Vuncannon and presented it to Respondent, the owner. The inspection included pesticide storage, restricted use pesticide (RUP) sales records, and pesticide product registrations that were being offered for sale.
4. Respondent provided the requested information as Inspector Smith worked through the facility and noted several irregularities with inspection requirements. While reviewing the required paperwork for storing RUPs, Respondent was unable to locate the company's existing Pre-Fire Plan and Letter to Request an Annual Inspection from the fire department.

5. Complainant's Inspector Smith worked through the company's RUP sales records using the records provided to him. While reviewing the provided records, Inspector Smith noted several inconsistencies with documented EPA Registration Numbers and applicator licensing numbers. A couple of entries for RUP sales made earlier in the year included the correct EPA Registration Numbers as well as the correct applicator license numbers and were stated as being transcribed incorrectly when making additional sales entries later in the year.
6. Complainant's Inspector Smith and Respondent discussed the inconsistencies and had them corrected during the inspection. Also discussed was using reference pages for both the RUP items' EPA REG NO. being sold as well as the license numbers of the applicators purchasing the RUP products.
7. While documenting a sample of the sales records, Inspector Smith came across an entry dated March 27, 2017, for an RUP item. The sales record stated a sale was made to Nathaniel D. Rankin, Private Pesticide Applicator License No. 038-63988. The NCDA&CS license database reflected Mr. Rankin's pesticide license as expired/inactive certified; the license was not renewed until April 25, 2017. The sale included Pilot 4E Chlorpyrifos Agricultural Insecticide EPA Reg. No. 33658-9.
8. Complainant's Inspector Smith inquired if there might have been RUP sales made to an unlicensed applicator and reviewed all RUP sales records for sales made to Mr. Rankin in 2017. Invoices documented RUP sales to Mr. Rankin on the following dates: March 27, 2017; April 15, 2017; April 17, 2017; and then April 18, 2017.
9. Complainant's Inspector Smith checked the pesticide product registrations ensuring the manufacturer registered the product for sale in North Carolina and reviewed the label information. The pesticide storage area was inspected as well and Inspector Smith requested Respondent to replenish the spill kit with additional materials since he was actively storing RUP products. Respondent agreed to have it resolved before close of business.
10. Complainant's Inspector Smith issued a Notice of Non-Compliance (NONC) for E.E. Vuncannon, Inc. for not being able to provide a copy of their Pre-fire Plan and Letter to Request an Annual Inspection from the fire department. The NONC provided Respondent fourteen (14) days to develop or find their pre-fire plan and fire department inspection request letter.
11. Complainant's Inspector Smith returned to E.E. Vuncannon, Inc. for the re-inspection to clear the active NONC issued earlier in the month. At that time, Respondent provided the new pre-fire plan and letter to request an annual inspection from the fire department for E.E. Vuncannon, Inc. clearing the storage violation issued during the prior visit. Respondent stated that he had contacted Mr. Rankin, after the initial April 12, 2017 inspection and notified him that his license was expired. Inspector Smith then reviewed Respondent's process on how to validate current licensing with his customers before RUP sales are made.

12. The RUPs purchased by Mr. Rankin while unlicensed were as follows:

Pilot 4E: EPA Reg. No. 33658-9

Chlorpyrifos: O,O-diethylO-(3,5,6-trichloro-2-pyridinyl)  
phosphorothioate..... 45.0%

Atra-5 Herbicide: EPA Reg. No. 19713-80

Atrazine ..... 52.50%

Helmaquat 3SL: EPA Reg. No. 74530-48

Paraquat dichloride (1,1'-dimethyl-4,4'-bipyridinium dichloride) ...43.8%

Atrazine 4L: EPA Reg. No. 35915-4-60063

Atrazine (2-chloro-4-ethylamino-6-isopropylamino-s-triazine).....41.9%

13. The label statement for these RUPs read:

**RESTRICTED USE PESTICIDE**

For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

14. According to the documents, the purchase, use and licensing timeline is as follows:

3-27-2017 purchased Pilot from E.E. Vuncannon Inc

4-15-2017 purchased Atrazine from E.E. Vuncannon Inc

4-16-2017 applied Helmquat & Atrazine by Nathaniel D. Rankin

4-17-2017 applied Helmquat & Atrazine by Nathaniel D. Rankin

4-17-2017 purchased Helmquat from E.E. Vuncannon Inc.

4-18-2017 purchased Helmquat from E.E. Vuncannon Inc.

4-25-2017 Nathaniel D. Rankin's license was issued

4-28-2017 applied Helmquat by Nathaniel D. Rankin

15. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-451

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection;

(13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 NCAC 09L .1302

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

02 NCAC 09L .1905

(f) The person responsible for each pesticide storage facility shall also be responsible for the following:

(2) development of a prefire plan for the storage facility. Such plan shall be a description of the facility's plans and procedures for management of fires involving pesticides. A suggested prefire plan format is the publication, "Pre-Planning and Guidelines for Handling Agricultural Fires," reprinted by the National Agricultural Chemicals Association:

(A) one copy of the plan approved by the fire department and/or emergency services office having jurisdiction shall be maintained in the office of the storage facility for inspection by the Board;

16. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

17. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 17(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 17(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

18. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

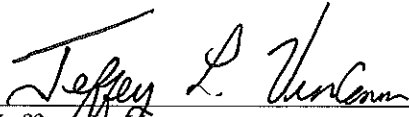
19. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

20. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

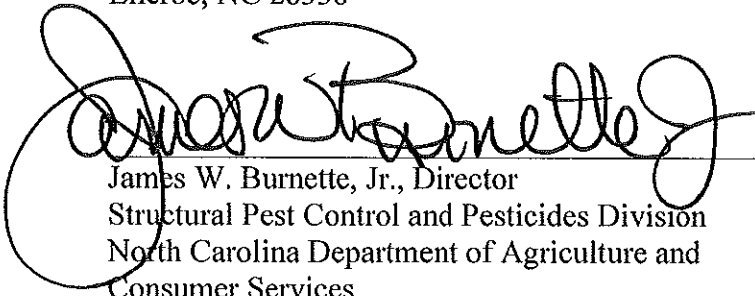


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

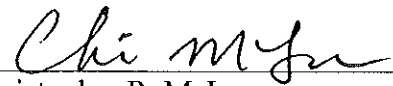
BY CONSENT:

  
Mr. Jeffrey L. Vuncannon  
E.E. Vuncannon, Inc.  
150 Railroad Street  
Ellerbe, NC 28338

7-10-18  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

7-17-2018  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

7/17/2018  
Date

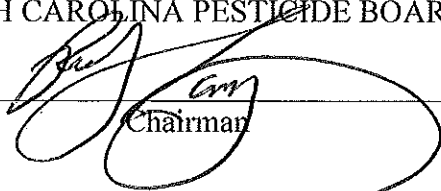
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



IR2017-027B

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Jeffrey L. VunCannon,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Jeffrey L. Vuncannon, Respondent

Dwight E. Seal, Western Field Manager



STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

PAUL I. JETT,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-27(C)

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Paul I. Jett, Respondent.

1. At all times relevant hereto, Respondent held an active Pesticide Dealer License No. 037-4394 for Triangle Cardinal Chemicals, Inc. located at 3272 NC Hwy 5, Aberdeen, North Carolina.
2. On April 12, 2017, Complainant's North Carolina Pesticide Inspector, Christopher Smith, performed a routine inspection of E.E. Vuncannon, Inc. located in Ellerbe, North Carolina.
3. As a result of this inspection, Complainant's Inspector Smith became aware of possible sales of restricted use pesticides to an individual (Nathanial D. Rankin, Private Pesticide Applicator License No. 038-63988) while his private applicator certification was expired. Mr. Rankin's certification was not renewed until April 25, 2017.
4. After Complainant's Inspector Smith's visit at E.E. Vuncannon Inc., he contacted Mr. Nathanial D. Rankin to discuss the status of his license as well as his recent RUP purchases. Mr. Rankin stated that when he first purchased an RUP item it was from Triangle Chemical in Aberdeen, North Carolina. At that time, there appeared to be an issue with his license, but it was first thought to be an issue with incorrect documentation, so the sale was completed and he purchased Atrazine from Triangle Chemical on April 17, 2017. Mr. Rankin mentioned that several days after the purchase, he was contacted by Triangle Chemical informing him that his license was expired. However, the sale remained since the product had already been applied.

5. Complainant's Inspector Smith requested the assistance of Ms. Sydney Ross, Pesticide Inspector for Complainant. Complainant's Inspector Ross visited Triangle Cardinal Chemicals, Inc., which is operated by Respondent. At that time, Complainant's Inspector Ross obtained a copy of the RUP sales invoice showing that Mr. Rankin purchased Atrazine from Triangle Chemicals on April 17, 2017 while his certification was expired.

6. The RUP purchased by Mr. Rankin while unlicensed were as follows:

Atrazine 4L: EPA Reg. No. 35915-4-60063  
Atrazine (2-chloro-4-ethylamino-6-isopropylamino-s-triazine).....41.9%

7. The label statement for this RUP reads:

**RESTRICTED USE PESTICIDE**

For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

**N.C.G.S. § 143-451**

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

(13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

**02 NCAC 09L .1302**

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

11. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

12. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

13. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

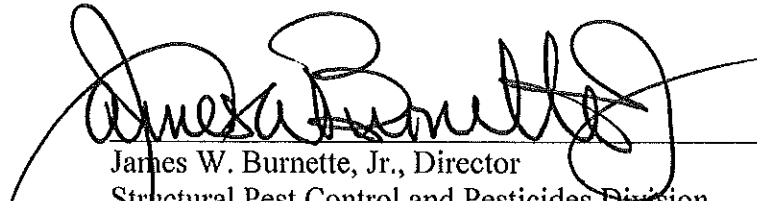
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



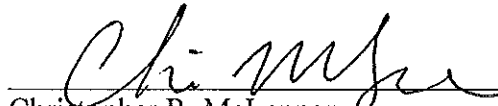
Mr. Paul I. Jett  
Triangle Cardinal Chemicals, Inc.  
3272 NC Hwy 5  
Aberdeen, North Carolina 28315

7/11/18  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

7/16/2018  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

7/16/2018  
Date

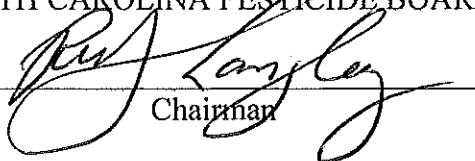
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman





IR2017-027C

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Paul I. Jett,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Paul Jett, Respondent

Dwight E. Seal, Western Field Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-035

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )  
Complainant, )  
v. )  
CLAUDE D. MORGAN, IV., )  
Respondent. )

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Claude D. Morgan, IV., Respondent.

1. At all times relevant hereto, Respondent, Claude D. Morgan, IV., held Commercial Pesticide Applicator License No. 026-11092, with detail involving ornamental & turf pest control. Claude D. Morgan operates Dream Green, Inc. d/b/a Weed Man of Lake Norman.
2. On May 17, 2017, Complainant's Inspector Charlie Jones investigated an anonymous complaint against Respondent.
3. On May 17, 2017, Complainant's Inspector met with Respondent at 7473 Hagers Hollow.
4. Complainant's Inspector inspected Respondent's pesticide storage area. While doing the inspection, Complainant's Inspector alleges to have observed products with single sheets of paper taped to the front of the container and others with labels that had the word "specimen" on them. Complainant's Inspector took photographs of these containers.
5. Complainant's Inspector did an inventory of Respondent's storage and alleges to have found a total of eight (8) products that lacked their original labeling. Complainant's Inspector issued a Stop Use for each of the products that were allegedly identified and requested Respondent Morgan to remove the products and place them on a pallet. Respondent placed the products in a secure cabinet.

N.C.G.S. § 143-456(a)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

N.C.G.S. § 143-443(b)

It shall be unlawful:

- (1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Part or regulations promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this Part;

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license and/or a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Fifteen Thousand Four Hundred Dollars (\$15,400.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Fifteen Thousand Four Hundred Dollars (\$15,400.00) in twelve (12) payments of One Thousand Two Hundred Eighty-Three Dollars and Thirty-Three cents (\$1,283.33) each. Respondent's first payment of One Thousand Two Hundred Eighty-Three Dollars and Thirty-Three cents (\$1,283.33) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining eleven (11) installment payments, in the amount of One Thousand Two Hundred Eighty-Three Dollars and Thirty-Three

unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law.

- (a) Complainant hereby agrees that, so long as Respondent complies with the terms of this Agreement, Complainant will not institute any civil action against Respondent to collect the sum of money owed pursuant to this Agreement or file the Confession of Judgment Respondent has executed and provided to Complainant. Furthermore, Complainant agrees to file the Confession of Judgment only if Respondent fails to make a payment on time, pursuant to the terms of this Agreement, after giving Respondent notice of his failure to make said payment, and after allowing Respondent five (5) business days to cure his breach by paying the amount due in full.
- (b) Complainant further agrees that, once Respondent has made his payment in full, and the Complainant has received Fifteen Thousand Four Hundred Dollars (\$15,400.00) in satisfaction of the terms of this Agreement, Complainant shall provide to Respondent a document confirming receipt of full payment and releasing Respondent from further liability under this Agreement within thirty (30) days of receipt of such payment. Together with the evidence of satisfaction of payment under this Agreement, Complainant will also provide Respondent with the original Confession of Judgment, unless original Confession of Judgment has already been filed by reason of Respondent's breach of this Agreement.

15. The parties agree that the execution of this Settlement Agreement is done solely for the purposes of compromise, and to eliminate the burden and expense of further litigation, and does not constitute, and shall not be construed as, an admission of liability or wrongdoing, or as evidence with respect thereto, by Respondent, on account of any claims or matters arising between Complainant on the one side and Respondent on the other side, any such liability being specifically denied. The parties further agree that this Settlement Agreement shall not be offered or received against any of the parties as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement.

16. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto

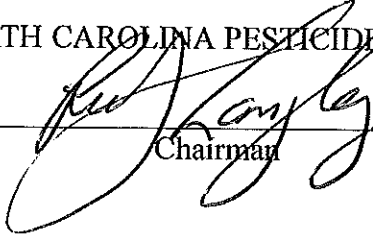
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:



Chairman



STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

PRESTON M. STEWART d/b/a  
STEWART'S LAWN AND  
LANDSCAPING,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-37

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Preston M. Stewart d/b/a Stewart's Lawn and Landscaping, Respondent.

1. At all times pertinent to this matter, Respondent was an unlicensed commercial pesticide applicator operating as Stewart's Lawn and Landscaping at 3609 Robinson Circle, Gastonia, North Carolina.
2. On May 19, 2017, Complainant's North Carolina Pesticide Inspector Charlie Jones performed a routine inspection to Respondent, Stewart's Lawn and Landscaping while at the Chili's located at 3086 E. Franklin Street, Gastonia, North Carolina.
3. Complainant's Inspector Jones observed three (3) jugs of herbicides and a backpack sprayer on the truck belonging to Stewart's Lawn and Landscaping. He approached Mr. Eric Pennington, who was a new employee and has been on the job only for a week.
4. Mr. Pennington phoned the Respondent, who is the owner of the company, and confirmed the company did not have a valid commercial pesticide applicator license registered to the business, even though Complainant's Inspector Jones had issued several times Notice of Non-Compliance ("NONC") warnings. The NONC was issued on April 17, 2014, and Respondent's company has been stopped several times since that time. Mr. Pennington stated he was unaware of any of this information and relayed a message from Respondent that "there was nothing that

12. On May 23, 2017, Complainant's Inspector Jones received an e-mail from Chili's of Gastonia, which contained a contract between Chili's and Respondent. In the contract Respondent agrees to provide "Pre-emergent Crabgrass Preventer in mid-February" and "round up spray herbicide beds." This contract was dated March 18th, 2016.

13. On May 24, 2017, the employee of Respondent, Eric Pennington, contacted Complainant's Inspector Jones and stated that he would be willing to become the pesticide license holder for the company and that he would be changing the company name on his license. As follow-up, as of December 31, 2017, Mr. Pennington's commercial license now holds a status of *inactive uncertified*.

14. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

N.C.G.S § 143-452

(a) No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

02 NCAC 09L .0503

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations. The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

17. As further evidence of good faith and as consideration for this Agreement, Respondents agree to sign and acknowledges that they have signed, before a Notary Public, a Confession of Judgment in the amount of Six Hundred Dollars (\$600.00) in favor of Complainant. Respondents further acknowledges and agrees that if Respondents fail to make any payment required under the terms of this Agreement, Complainant may institute an action in Wake County Superior Court, and file the Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law.

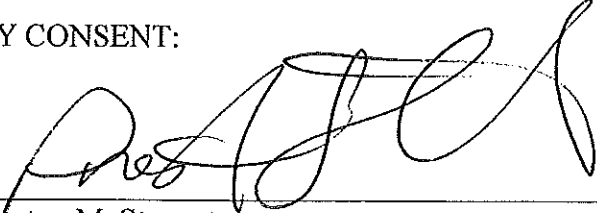
- (a) Complainant hereby agrees that, so long as Respondents comply with the terms of this Agreement, Complainant will not institute any civil action against Respondents to collect the sum of money owed pursuant to this Agreement or file the Confession of Judgment Respondent has executed and provided to Complainant. Furthermore, Complainant agrees to file the Confession of Judgment only if Respondents fail to make a payment on time, pursuant to the terms of this Agreement, after giving Respondent notice of his failure to make said payment, and after allowing Respondent three (3) business days to cure his breach by paying the amount due in full.
- (b) Complainant further agrees that, once Respondents have made their final payment and the Complainant has received Six Hundred Dollars (\$600.00) in satisfaction of the terms of this Agreement, Complainant shall provide to Respondents a document confirming receipt of payment and releasing Respondents from further liability under this Agreement. Complainant will also provide Respondents with the original Confession of Judgment, unless original Confession of Judgment has already been filed by reason of Respondents' breach of this Agreement.

18. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.



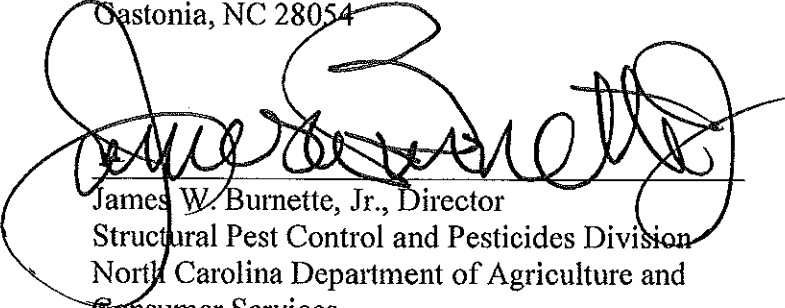
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

  
Preston M. Stewart  
Stewart's Lawn and Landscaping  
3609 Robinson Circle  
Gastonia, NC 28054

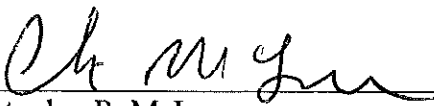
Date

9/26/18

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

Date

10/12/2018

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

Date

10/10/2018

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

KENNETH PARNELL,

Respondents.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-44

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Kenneth Parnell, Respondents.

1. At all times pertinent to this matter, Respondent held a Commercial Pesticide Applicator License No. 026-25389 for P&P Spraying.
2. On June 5, 2017, Complainant's North Carolina Pesticide Inspector, Mr. William B. Dunn, received an email regarding a complaint regarding a pesticide application to a soybean field directly next to a residential garden.
3. The complaint involved Mr. Alan Bunn at 7214 Fate Road in Lucama, North Carolina witnessing an application being performed on May 10, 2017 to the soybean field directly next to his garden. Mr. Bunn said that the application was being performed within several feet of his garden.
4. Complainant's Inspector Dunn inspected the garden in question on June 5, 2017. According to Mr. Bunn he stated he went out to the individual performing the application and told him he was concerned that the spray may be getting on his garden. Mr. Bunn asked what the person was applying to the field and he was told it was herbicides. The applicator's name was Brooks Peedin and that he was custom applying for P&P Spraying.

12. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license/certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

(b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is

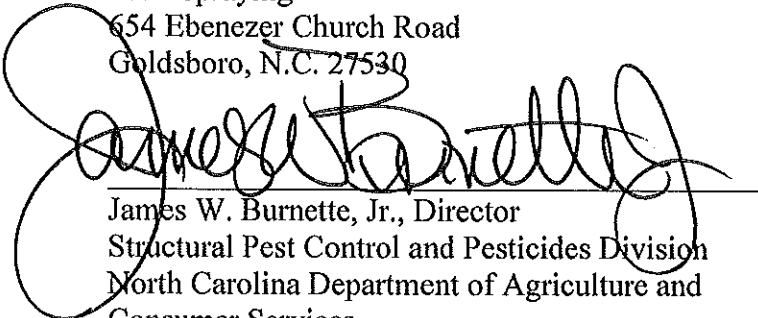
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



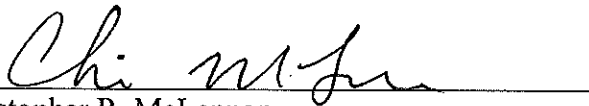
Kenneth R. Parnell  
P&P Spraying  
654 Ebenezer Church Road  
Goldsboro, N.C. 27530

7-16-18  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

7-25-2018  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

7/24/2018  
Date

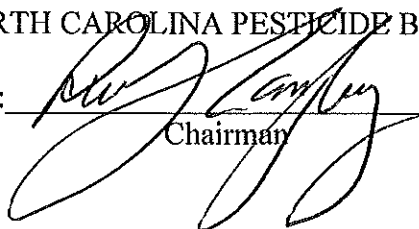
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD

COUNTY OF WAKE

File No. IR2017-46

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

ALAN LOWE d/b/a TRIAD MOSQUITO  
CONTROL,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Alan Lowe d/b/a Triad Mosquito Control, Respondent.

1. At all times pertinent to this matter, Respondent was the owner and operator of Triad Mosquito Control 6588 Bobwhite Lane, Brown Summit, North Carolina.
2. On June 5, 2017, Complainant's North Carolina Pesticide Inspector Sydney Ross received an email regarding a complaint describing a potential bee kill in Mayodan, North Carolina. Mr. Sid Laurence is a hobbyist beekeeper, and described a spray event occurring on June 3, 2017 at his neighbor's property by an individual from Triad Mosquito Control.
3. The complaint involved Mr. Laurence witnessing an individual from Triad Mosquito Control spraying blooming redbud trees in the property adjacent to his own. Mr. Laurence has four (4) bee hives in his backyard, located at 171 Poole Rd, Mayodan, North Carolina. He noticed the spray application occurring while pollinators were actively foraging on the redbuds being sprayed.
4. Complainant's Inspector Ross requested Mr. Don Hopkins, NCDA&CS Apiary Inspections Supervisor, to accompany her to Mr. Laurence's property.
5. Mr. Laurence stated to Complainant's Inspector Ross that he saw the application being made by Respondent, the owner of Triad Mosquito Control. The application was made for the homeowner, Karen Land at 212 Cardwell Road, Mayodan, North Carolina. Mr. Laurence stated

he approached Respondent and asked if he had read the label associated with the chemicals being sprayed. Mr. Laurence explained that his bees were actively foraging on the redbuds being sprayed and that the chemicals being used are most likely toxic to bees. Respondent stopped spraying and told Mr. Laurence that he would have to speak with the homeowner that hired him to make the application. Mr. Laurence went and looked at the chemicals present in the back of Respondent's truck and saw both Bifen I/T (EPA Reg. #53883-118) and Pivot 10 (EPA Reg. # 53883-280).

6. Complainant's Inspector Ross, Mr. Hopkins, and Mr. Laurence walked the property and viewed the area in which the spray event occurred. Complainant's Inspector Ross noticed bees actively foraging on the plants in question, which are Texas privets, *Ligustum japonicum* 'Texanum', not redbuds. The privets were in full bloom. The three of them opened all four beehives on site and inspected the population size. No significant loss of bees was noticed by Mr. Laurence and Mr. Hopkins determined that the bees looked healthy. No dead bees were seen at the hive entrance or inside any of the hives. Some small hive beetles were present in the hives and worker egg production, due to lack of a queen, was seen in hive one. Hive one was combined with hive two after inspection and based off a recommendation made by Mr. Hopkins.

7. Complainant's Inspector Ross met with Respondent at the Home Depot parking lot, located at 3215 Brassfield Rd, Greensboro, North Carolina 27410. Respondent was accompanied by his wife, Vicki Lowe, who does bookkeeping for the business, and brought his work vehicle with the spray equipment used during the incident. Respondent was spraying Bifen I/T (EPA Reg. #53883-118) on Saturday June 3, 2017, but not Pivot 10 (EPA Reg. # 53883-280), although it was present on his truck. Respondent stated he was making an outdoor application to reduce populations of chiggers, mosquitos, and ticks in the backyard where he was spraying. He was applying to both the interior and exterior perimeter of the backyard. He began the application at 1:30 p.m. using a backpack sprayer. The application lasted for ten minutes, by his estimation, until Mr. Laurence asked him to stop. He used the label rate listed under the 'Outdoor Applications' section for mosquitos for the Bifen I/T (EPA Reg. #53883-118) application, specifically at a rate of 0.25- 0.5 ounces per 1,000 square feet.

8. Complainant's Inspector Ross questioned Respondent if he had read the label statement on Bifen regarding "Environmental Hazards," which states applicators should not apply the product when plants are in bloom due to toxicity to bees. Respondent stated he had not.

9. Complainant's Inspector Ross looked up Respondent's commercial pesticide license no. 026-33034, and noticed it had expired December 31, 2015, and that Respondent was only licensed in the categories core, ornamental & turf. Complainant's Inspector Ross explained to Respondent that in order to spray for mosquitos legally, he needed to hold a commercial public health license as well.

10. On July 11, 2017, Mrs. Lowe contacted Complainant's Inspector Ross and stated that Respondent stopped spraying and closed the business July 4, 2017, and was removing the business's web address.

11. The pesticide involved in this investigation is:

Bifen I/T (bifenthrin), EPA Reg. No. 53883-118, Class IV Caution

12. The label for *Bifen I/T* reads as follows:

This product is highly toxic to bees exposed to direct treatment or residues on blooming crops or weeds. Do not apply this product or allow to drift to blooming crops if bees are visiting the treatment area.

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

N.C.G.S. § 143-452

(a) No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

NCAC 09L .0503

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations. The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license/certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) The Respondent agrees to pay the sum of Five Hundred Dollars (\$500.00) to the North Carolina Department of Agriculture and Consumer Services. Respondent shall pay Five Hundred Dollars (\$500.00) in five (5) payments of One Hundred Dollars (\$100.00) each. Respondent's first payment of One Hundred Dollars (\$100.00) shall be due on the first day of the month immediately following the North Carolina Pesticide Board's approval of this Settlement Agreement. Respondent's remaining four (4) installment payments, in the amount of One Hundred Dollars (\$100.00) each, shall be due on the first day of every subsequent month until the remaining balance is completely paid. Respondent's payments shall be considered to have been paid on time if Respondent sends the payment by U.S. Postal Service First Class Mail, or other commercial carrier, prepaid, and the envelope is postmarked on or before the date when the payment is due. Respondent's failure to fulfill his agreement to pay Eight Hundred Dollars (\$800.00) as provided herein may subject him to further disciplinary action, including, but not limited to, those described in N.C.G.S. §§ 143-456, 1436-461(7), 146-464, and 143-469;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent further acknowledges and agrees that, if Respondent fails to make any payment as required under the terms of this Agreement, the North Carolina Department of Agriculture and Consumer Services may institute an action in Wake County Superior Court and file a Statement Authorizing Confession of Judgment in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Five Hundred Dollars (\$500.00) according to the payment plan outlined in 15(a), this Agreement will constitute a civil penalty assessment of the Board of Five Hundred Dollars (\$500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;



- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(d) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(d) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

16. As further evidence of good faith and as consideration for this Agreement, Respondents agree to sign and acknowledges that they have signed, before a Notary Public, a Confession of Judgment in the amount of Five Hundred Dollars (\$500.00) in favor of Complainant. Respondents further acknowledges and agrees that if Respondents fail to make any payment required under the terms of this Agreement, Complainant may institute an action in Wake County Superior Court, and file the Confession of Judgment, in order to recover any unpaid amount under the terms of this Agreement. An action to recover any amount under this section shall not relieve any party from any other penalty permitted by law.

- (a) Complainant hereby agrees that, so long as Respondents comply with the terms of this Agreement, Complainant will not institute any civil action against Respondents to collect the sum of money owed pursuant to this Agreement or file the Confession of Judgment Respondent has executed and provided to Complainant. Furthermore, Complainant agrees to file the Confession of Judgment only if Respondents fail to make a payment on time, pursuant to the terms of this Agreement, after giving Respondent notice of his failure to make said payment, and after allowing Respondent three (3) business days to cure his breach by paying the amount due in full.
- (b) Complainant further agrees that, once Respondents have made their final payment and the Complainant has received Five Hundred Dollars (\$500.00) in satisfaction of the terms of this Agreement, Complainant shall provide to Respondents a document confirming receipt of payment and releasing Respondents from further liability under this Agreement. Complainant will also provide Respondents with

the original Confession of Judgment, unless original Confession of Judgment has already been filed by reason of Respondents' breach of this Agreement.

17. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

18. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

19. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

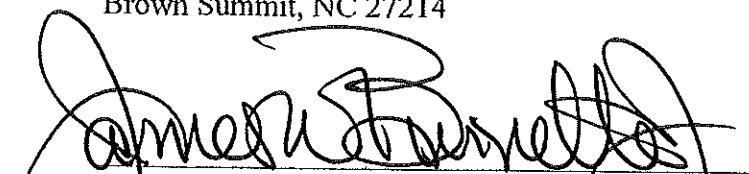
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



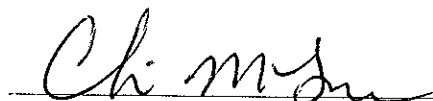
Alan Lowe  
Triad Mosquito Control  
6588 Bobwhite Rd.  
Brown Summit, NC 27214

9/20/18  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

9/25/2018  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

9/25/2018  
Date

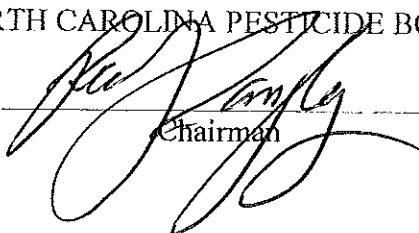
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



IR2017-046

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Alan Lowe,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Alan Lowe, Respondent

Dwight E. Seal, Western Field Manager

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-065

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF )  
AGRICULTURE AND CONSUMER )  
SERVICES, STRUCTURAL PEST )  
CONTROL AND PESTICIDES DIVISION, )

Complainant,

SETTLEMENT AGREEMENT

v.

SHAWN MITCHELL,

Respondent.

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Shawn Mitchell, Respondent.

1. At all times relevant hereto, Respondent, Shawn Mitchell, held a North Carolina Private Pesticide Applicator's License, No. 038-72244.
2. On July 6, 2017, Complainant's North Carolina Pesticide Inspector, John Colborne, followed up on a pesticide complaint made by Mrs. Judy Grimes of Goldsboro, North Carolina.
3. Complainant's Inspector Colborne met Mrs. Grimes at her residence on July 6, 2017, and presented credentials for a Notice of Inspection. Mrs. Grimes has a 1/2-acre residence, which is located 1/3 mile south of NC Hwy 13, on Country Run Lane in Goldsboro, North Carolina.
4. Mrs. Grimes alleges that on June 23, 2017, approximately at 10:00 a.m., she witnessed a farmer making a pre-plant (burndown) herbicide application with a large red sprayer to the 25-acre soybean field that is adjacent to her west property line. Mrs. Grimes stated at the time of application the wind was blowing 10-15 mph from the west. She did not know the name of the farmer who made the application in question or tends the farm field, but knew the soybean field was owned by Victory Faith Center Church.
5. Mrs. Grimes stated on June 26, 2017, she noticed minor herbicide injury (spotted leaves and desiccated leaf tissue) to numerous ornamental plants, tomatoes, and blueberry bushes on the west side of her property.

6. On July 6, 2017, Complainant's Inspector Colborne met with Respondent at his farm, Mitchell Farms, in Dudley, North Carolina. Complainant's Inspector Colborne presented credentials and issued a Notice of Inspection. Respondent stated he leases the field from Victory Faith Center Church, of Goldsboro North Carolina and that he was responsible for one pesticide application to the field in question. An employee of Mitchell Farms, Jim Lewis, made a pre-plant (burndown) herbicide application of Gramoxone 2.0 SL Herbicide and Surveil Herbicide to the 25-acre soybean field, located adjacent to the west property line of the Grimes residence.

7. Respondent stated the application was made from a Case Patriot 4410 sprayer with 90-foot spray booms. The application was made with 20 gallons of water (carrier) and was for the control of weeds and grass. The boom height was 2.5' feet above soil level.

8. Respondent alleges he could not recall the wind speed, the wind direction, nor temperature at the time of the application. Respondent did not know the nozzles used on the Case Patriot 4410 sprayer either, but stated the sprayer was operating at 25 psi pressure.

9. The pesticides involved in this investigation are as follows:

Gramoxone SL 2.0 Herbicide (paraquat dichloride),  
EPA Reg. No. 100-1431, a bipyridylium, contact, non-selective herbicide,  
Class I, Danger/Poison

Surveil Herbicide (cloransulam-methyl, flumioxazin),  
EPA Reg. No. 62719-689, an ALS and PPO inhibiting herbicide,  
Class III, Caution.

10. Complainant's Inspector collected the following samples on July 6, 2017, while at the Grimes' residence:

- Sample #026 -- Non Target vegetation sample (gardenia plant) taken on Grimes' property. Sample taken 100' feet west of Respondent's 25-acre soybean field.
- Sample #027 -- Non Target vegetation sample (oak tree) taken on Grimes' property. Sample taken 20' feet west of Respondent's 25-acre soybean field.
- Sample #028 --Target vegetation sample (grass/weeds) taken 50' feet east of Grimes' property line in Respondent's 25-acre soybean field.

11. On July 10, 2017, the samples were sent to Complainant's pesticide residue lab in Raleigh, North Carolina for analysis. The laboratory analysis revealed as follows:

## Lab Results

	<u>Paraquat</u>	<u>Cloransulam</u> <u>-methyl</u>	<u>Flumioxazin</u>
JC-026 Non-target gardenia vegetation, Grimes yard	BQL<0.998 ppm	0.021 ppm	ND
JC-027 Non-target oak tree vegetation, Grimes yard	1.03 ppm	0.063 ppm	0.227 ppm
JC-028 Target grass/weed vegetation, Mitchell field	63.2 ppm	0.416 ppm	3.27 ppm

12. The label statement for the pesticides involved read as follows:

*Gramoxone SL 2.0 Herbicide:*

**"Environmental Hazards ... Drift ...** Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas."

*Surveil Herbicide:*

**"Environmental Hazards ...** Do not apply when weather conditions favor drift from treated areas."

13. Dr. Alan C. York, Professor Emeritus, of NCSU Crop and Soil Sciences, looked at the photographs in the case, and stated "I reviewed this case (IR 2017-065; Judy Grimes investigation), including the photos taken by John Colborne. To a reasonable degree of scientific certainty, injury symptoms were caused by paraquat. This was particularly evident on the gardenia."

14. Respondent acknowledged that a small amount of herbicide drift from his herbicide application moved onto the Grimes property. He asserted that he would compensate Mrs. Grimes for any damage caused.

15. As a result of these findings, Complainant alleges that Respondent, either by acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

- (b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

16. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private pesticide applicator's certificate and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-440(b)

The Board may...require the certification and recertification of private applicators, ...and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; ....

N.C.G.S. § 143-469

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G. S. 143-460(29)a only for willful violations.

17. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

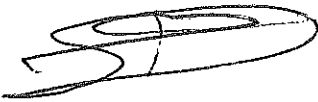
- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 17(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 17(c) of this Agreement.



- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
  - (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.
- 18. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.
- 19. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.
- 20. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

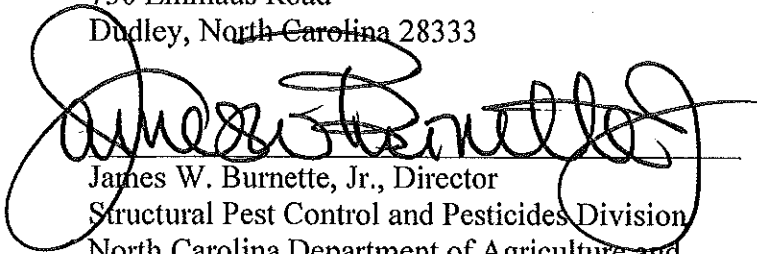
BY CONSENT:



Mr. Shawn Mitchell  
Mitchell Farms  
730 Emmaus Road  
Dudley, North Carolina 28333

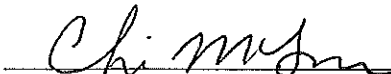


Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/31/2018  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

10/29/2018  
Date

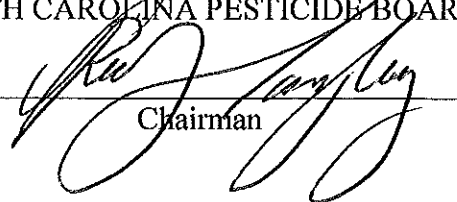
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Shawn C. Mitchell,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Shawn C. Mitchell, Respondent  
Patrick N. Farquhar, Eastern Field Manager



STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST CONTROL  
AND PESTICIDES DIVISION,

Complainant,

v.

CHRISTOPHER SANDERSON,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-083

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Christopher Sanderson, Respondent.

1. At all times relevant hereto, Respondent held a Private Pesticide Applicator Certification Number 038-85794.

2. On July 20, 2017, Complainant's North Carolina Pesticide Inspector John Colborne and Pesticide Specialist, Jason Williams, investigated a pesticide drift complaint from Mr. Martin W. Harper of Deep Run, North Carolina regarding an application of Dicamba to a neighboring farms cotton field that had drifted and caused adverse effects on his tobacco, making it unmarketable.

3. Mr. Harper stated he observed herbicide damage to his entire 28.4-acre tobacco field, (located off Copeland Farm Road). Complainant's Inspector Colborne and Specialist Williams inspected the tobacco crop of Mr. Harper and observed tobacco plants with symptoms (twisting, curling, and cupping of leaves) of Dicamba herbicide injury in the entire field.

4. On July 25, 2017, Complainant's Inspector Colborne met with Respondent at his farm in Kinston, North Carolina. Respondent said, he farms the 40- acre cotton field located off Copeland Farm Road and 540' feet south side of the Harper 28.4 tobacco field in question. The fields are separated by the Alton Roberson 38.2-acre Roundup Ready cotton field. Respondent said the field was planted in Xtendimax cotton on May 17, 2017. Respondent provided the following information on the pesticide applications to the field in 2017:

May 30, 2017

Post emergent

Xtendimax Herbicide EPA Registration Number 524-617 22 oz. per acre

Makaze Herbicide EPA Registration Number 34704-890 1 quart per acre

Reign (surfactant) 3.2 ounces per acre

5. Respondent said he made the application from a John Deere 6700 sprayer with 60-foot booms, and computer calibration. The herbicide mixture was applied with a 10-gallon water (carrier) per acre. Respondent said, the sprayer had TT 1104 nozzles. Respondent states the application was made on May 30, 2017 at 9:00 a.m. Respondent states, at the time of application the wind was from the north at 4-5 mph, and the temperature was 79 – 80 degrees. Respondent states, the application was made 18 inches above the cotton canopy, traveling at 7.5 mph, with a 32-33-psi pressure. Respondent stated that he attended the North Carolina State Extension Service Auxin herbicide training. No downwind buffer was established during this application.

6. On July 26, 2017, Dr. Matthew C. Vann, Assistant Professor & Tobacco Specialist, North Carolina State University, examined the 28.4-acre Harper tobacco field (located off Copeland Farm Road) in Kinston, North Carolina. His evaluation was that the tobacco was exhibiting auxin mimic herbicide.

7. On July 31, 2017, Dr. Alan York, Professor Emeritus, North Carolina State University Crop and Soil Sciences, and Robbie Parker, Ph.D. (Tobacco Agronomy) with RJR Reynolds Tobacco, examined the tobacco field in question. Dr. York and Mr. Parker both agreed that the most extensive Dicamba herbicide injury was on the south side of the tobacco field, but the entire field has Dicamba herbicide injury.

8. On August 3, 2017, Complainant's Inspector Colborne received a field report from Dr. York stating in the 28.4-acre tobacco field "Symptoms typical of dicamba injury were observed all along the front side of the field adjacent to the highway and the symptoms became less with depth into the field."

9. Complainant's Inspector collected the following samples as part of the investigation:

Sample # JC-034 – Non-Target vegetation sample (tobacco leaves) taken in northwest corner of Harper 30-acre tobacco field.

Sample # JC-035 - Non-Target vegetation sample (tobacco leaves) taken in southeast corner of Harper 30-acre tobacco field.

Sample # JC-036 - Target vegetation sample (cotton plants) taken 50' feet southeast of corn field in Respondent's cotton field.

10. Laboratory analysis of the samples collected by Complainant's Inspector revealed the following:

[REDACTED]

JC-34	Veg	Nontarget	Harper	ND	ND	ND
JC-35	Veg	Nontarget	Tobacco	ND	ND	ND
JC-36	Veg	Target	Harper	0.020ppm	ND	ND
			Tobacco			
			Sanderson			
			Soybean			

11. The label statements of the pesticide identified in the investigation read as follows:

*XTENDIMAX With VaporGrip Technology:*

**"DIRECTIONS FOR USE ... Spray Drift Management** do not allow herbicide solution to mist, drip, drift or splash onto desirable vegetation ...

*XTENDIMAX With VaporGrip Technology 24(c) label:*

"This labeling, and all other product labeling authorizing the desired application, must be in the possession of the user at the time of pesticide application. ...

**DIRECTIONS FOR USE ...** This labeling must be in the possession of the user at the time of herbicide application. ... **RESTRICTIONS/LIMITATIONS**  
**Auxin Herbicides – Best Management Practices:** The producer, certified applicator, or person responsible for the application of this product on cotton or soybeans, postemergence, must attend Auxin Herbicides – Best Management Practices training that is approved by the North Carolina Department of Agriculture and Consumer Services. ... **DO NOT APPLY** this product when the wind is blowing toward adjacent dicamba sensitive crops, including but not limited to, tobacco, grapes, watermelon, sweet potato, peanut, pepper, beans, non-dicamba tolerant cotton, and non-dicamba tolerant soybean, commercially grown tomatoes, EPA crop group 8 (fruiting vegetables such as tomato, pepper, eggplant, others) and EPA crop group 9 (cucurbits vegetables such as cantaloupe, cucumber, pumpkin, squash, watermelon, others).

*XTENDIMAX With VaporGrip Technology Supplemental Label:*

"This supplemental labeling must be in the possession of the user at the time of pesticide application. ... **DIRECTIONS FOR USE** This labeling must be in the possession of the user at the time of herbicide application. ... **SPRAY DRIFT MANAGEMENT** Do not allow herbicide solution to mist, drip, drift or splash onto desirable vegetation because severe injury or destruction to desirable broadleaf plants could result. **Non-target Susceptible Crops Failure to follow the requirements in this label could result in severe injury or destruction to desirable sensitive broadleaf crops and trees when contacting their roots, stems or foliage.** • Do not apply under circumstances where drift may occur to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use or consumption."

12. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S § 143-440

(b) The Board may . . . require the certification and recertification of private applicators, . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . ."

N.C.G.S. § 143-469

(d) A civil penalty of not more than five hundred dollars (\$500.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

(b) That Respondent denies he is guilty of any violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be construed as an admission of guilt as to any of the violations alleged herein, nor as an admission or evidence of negligence;

(c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;



(d) That Respondent agrees that if he fails to pay the total agreed upon sum of \_\_\_\_\_

Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;

(i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 14(d) and waives said right by consenting to the terms of this Agreement.

(ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(d) of this Agreement.

(iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

(e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

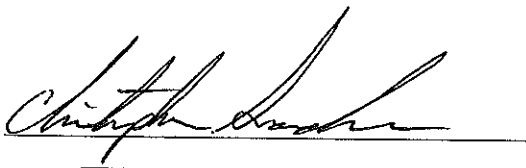
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16. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

17. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

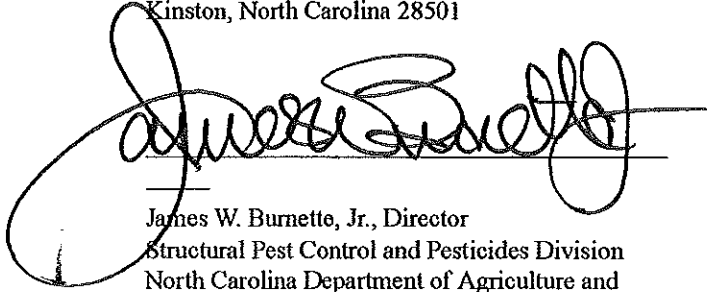
BY CONSENT:



Aug 29, 2018

Mr. Christopher Sanderson  
1967 Guinea Town Road  
Kinston, North Carolina 28501

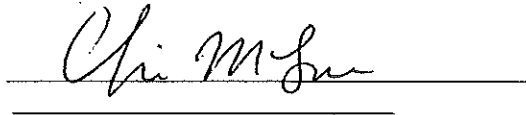
Date



9-18-2018

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

Date



9/11/18

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

Date

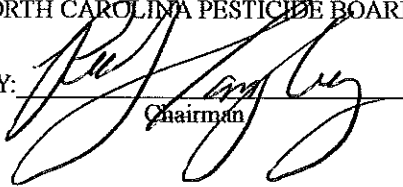
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman

IR2017-083(RSA)

IR2017-083

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Christopher Sanderson,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Christopher Sanderson, Respondent

Dwight E. Seal, Western Field Manager



STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

PATRICK E. FAULKNER, II.

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-086

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board ("Board"), this Settlement Agreement ("Agreement") is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Patrick E. Faulkner, II., Respondent.

1. At all times relevant hereto, Respondent held a Commercial Pesticide Applicator License Number 026-17128 for Crop Production Services ("CPS") located in Trenton, North Carolina.

2. On July 24, 2017, Complainant's Inspector, John H. Colborne, responded to a complaint filed by Mr. Martin W. Harper alleging dicamba injury to his tobacco from a pesticide application to an adjacent soybean field. Complainant's Inspector met Mr. Harper at his farm and Mr. Harper took him to the 37.1-acre tobacco field located off Lightwood Knot Road. Mr. Harper alleged that the tobacco was damaged from dicamba herbicide drift from the neighboring Brown soybean field. The Harper tobacco field in question is 80' feet north of the Brown 43-acre Xtend soybean field. The fields are separated by woodline/ditch. At the time, Complainant's Inspector observed tobacco plants with symptoms of dicamba herbicide injury on the south side of the field.

3. Mr. Harper allegedly observed the herbicide damage to the southwest corner tobacco field on June 27, 2017. Mr. Harper also alleges that on July 19, 2017, Chris Jernigan, North Carolina Department of Agriculture and Consumer Services, Agronomist, examined the tobacco and advised him the damage appeared to be from dicamba herbicide drift.

4. Mr. Harper alleges that on July 5, 2017, he met Mr. Eric Brown at the tobacco field in question. Mr. Brown allegedly told Mr. Harper that he had hired CPS to perform a burndown application to his field.

5. Complainant alleges that Mr. Harper claimed that on July 10, 2017, he met Respondent at the tobacco field in question, at which time Respondent allegedly acknowledged damaging the tobacco field. Respondent denies these allegations. Complainant further alleges that Mr. Harper claimed that Mr. Brown allegedly requested that CPS apply Engenia Herbicide (dicamba), Roundup, and 2,4-D to his field in early June 2017. Respondent denies these allegations and specifically denies that he applied any product containing dicamba on Mr. Brown's field as part of the June 6, 2017 application. Complainant further alleges that Mr. Harper claimed that Respondent sent tobacco samples to Water's lab for testing, which ultimately did not detect the presence of dicamba.

6. On July 26, 2017, Dr. Matthew C. Vann, North Carolina State University, Assistant Professor & Tobacco Specialist, examined the 37.1-acre Harper tobacco field and reported that, with regards to the Harper tobacco field "...symptoms of auxin mimic herbicide were observed, symptoms worse near woodline/ditch and soybean field."

7. On July 31, 2017, Complainant's Inspector met with Respondent. Respondent told Complainant's Inspector that his employee, Mr. Richard Avery, made a pre-plant (burndown) application of Makaze Herbicide and Strut Herbicide to the Brown field located off Lightwood Knot Road on May 12, 2017. Complainant has not made any allegations that the May 12, 2017 burndown application resulted in any damage to Mr. Harper's tobacco field.

8. Respondent told Complainant's Inspector that he made a second burndown application to the Brownfield on June 6, 2017, which consisted of Roundup Powermax II Herbicide and Amine 4 2,4-D Weed Killer. Respondent informed Complainant's Inspector that he did not have a dicamba product in the tank during this application.

9. Respondent produced the spray log for the Case 3330 sprayer that he alleges he used for the June 6, 2017 application of Roundup Powermax II and Amine 4 2, 4-D. The spray log does not indicate that any dicamba products were applied through that Case 3330 sprayer in 2017. Respondent also produced Mr. Brown's invoice for the June 6, 2017 application, which states that CPS sold, and applied, only Roundup Powermax II and Amine 4 2, 4-D.

- a) Complainant alleges that Respondent originally indicated he did not know if dicamba residue was present in the spray tank during the June 6, 2017 application. The spray log for the Case 3330 sprayer allegedly used for the June 6, 2017 application does not indicate that any dicamba products were used in that sprayer in 2017.
- b) Complainant alleges that Respondent could not locate the spray log to determine what prior herbicide applications were made using the Case 3330 sprayer, that it took Respondent two weeks to produce the spray log, and that the spray log provided consisted of photocopies of handwritten records. In response to these

allegations, Respondent states that he was on vacation at the time Complainant requested the spray records, and that he provided Complainant with the spray log as soon as practicable upon his return. Respondent further states that the spray log he provided to Complainant were photocopies of his spray log as it is kept in the ordinary course of business (handwritten records). The spray log lists the prior herbicide applications allegedly made using the Case 3330 sprayer and did not indicate that any dicamba products were used in that sprayer in 2017.

10. On July 24, 2017, Complainant's Inspector collected two vegetation samples from the Harper field and one soil sample from the Brown soybean field as well as numerous photographs of the allegedly damaged tobacco and surroundings.

11. On July 31, 2017, Dr. Alan York, Professor Emeritus, North Carolina State University Crop and Soil Sciences, examined the Harper tobacco field in question and stated "... symptoms typical of dicamba were observed in three of the four tobacco fields, and the symptoms gradually decreased with distance from the soybeans."

12. Laboratory analysis of the samples collected by Complainant's Inspector revealed the following:

		<u>2,4-D</u>	<u>5-OH Dicamba</u>	<u>Dicamba + 3,6-DCSA</u>	<u>Glyphosate</u>	<u>AMPA</u>
JC-40	Non-target vegetation, Harper tobacco	ND	ND	ND	ND	ND
JC-41	Non-target vegetation, Harper tobacco	ND	ND	ND	ND	ND
JC-42	Target soil, Brown soybean field	ND	ND	0.015 ppm	3.36ppm	1.07 ppm

13. The laboratory analysis did not detect dicamba on Mr. Harper's tobacco. Respondent denies that any alleged damage to Mr. Harper's tobacco was the result of any CPS application.

14. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

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No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

15. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

16. The parties are hereby compromising and settling the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not constitute an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) ("Settlement Amount") within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (e) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 16(d) and waives said right by consenting to the terms of this Agreement;
- (f) Respondent further agrees that if he fails to pay the Settlement Amount as set forth above the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may



be instituted based on the civil penalty assessment contained in paragraph 16(d) of this Agreement;

- (g) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorney fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the Settlement Amount pursuant to the terms of this Agreement.
- (h) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

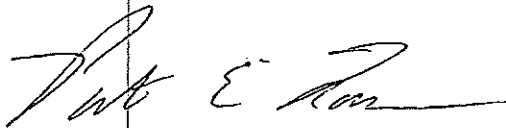
17. The parties agree that the consideration for this settlement and Agreement is the promises contained herein and that this Agreement contains the whole agreement between them.

18. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

19. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

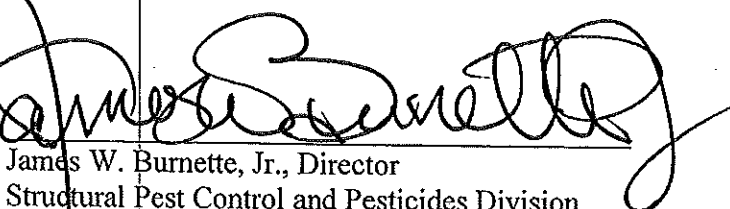
BY CONSENT:



Mr. Patrick E. Faulkner, II  
Crop Production Services, Inc.  
372 Hwy 58 South  
Trenton, North Carolina 28585

10-24-18

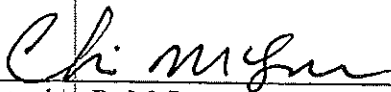
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

11/9/2018

Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

11/8/18

Date

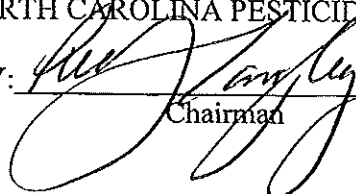
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

MARK A. GREENE,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-093

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Mark A. Greene, Respondent.

1. At all times relevant hereto, Respondent, Mark A. Greene, had a Commercial Pesticide Applicator License No. 026-8346 and operated as the Manager of Southern States Services in Waco, North Carolina.
2. On August 2, 2017, Complainant's North Carolina Pesticide Inspector Charles Clark received a call from Mr. Neil Scism, a farmer located in the Kings Mountain area of Cleveland County. Mr. Scism stated that he had what he believed to be herbicide damage to his soybeans from a nearby herbicide application made to a field owned by Mr. Mike Grayson.
3. Mr. Scism told Complainant's Inspector Clark the application had been made to the field on July 14, 2017, by Southern States Services out of Waco, North Carolina and that he started to see the damage to his soybeans shortly after.
4. Mr. Scism stated that he grows Liberty beans and had applied spot treatments of Liberty Herbicide for pigweed. These are the only applications which had been made to his crop.
5. On August 2, 2017, Complainant's Inspector Clark met with Mr. Scism at the farm site located at 113 Scism Farm Rd in Kings Mountain. Also on site was Mr. Andrew Scruggs, Extension Agent for Lincoln County and Cleveland County.

6. Complainant's Inspector Clark and Mr. Scruggs observed slight damage to the nearby beans. As they drove on, more damage to the beans could be seen such as cupping and wrinkled leaves with white tips. They stopped at the opposite end of the farm at an area next to the field, which had been treated by Southern States Services. The treated field and Mr. Scism's soybean field was only separated by a ten (10) foot farm road. The damage to the soybeans at this location was extensive.
7. On August 7, 2017, Complainant's Inspector Clark inspected the Waco location of Southern States Service, met with the manager, Respondent, and obtained the ticket/record for the field application made for Mr. Mike Grayson.
8. Respondent stated that an application of Brash Herbicide (2,4-D and Dicamba) had been made to the adjacent field owned by Mark Grayson. Complainant's Inspector Clark noted that on the record that Remedy Ultra was also used. Respondent stated the application was made by an employee, Pat Fowler, who was fairly new to farm applications. Respondent assured Complainant's Inspector Clark that their company would take care of the problem and both agreed to reach a settlement after yields were totaled.
9. Complainant's Inspector Clark took several photos along with sample of the soybean vegetation and sample of vegetation from the adjacent field treated by Southern States Services.
10. Complainant's Inspector Clark interviewed the applicator, Pat Fowler, about the treatment, labels, and protective equipment, etc. Mr. Fowler stated that he did not realize how close the soybean field of Mr. Scism was. He stated that the chemicals used are what they always use on pasture applications.
11. On August 11, 2017, Complainant's Inspector Clark received a call from another soybean farmer, Mr. Brian Dellinger. His farm is near the pasture application, just across Patterson Road. Inspector Clark had looked at this field during his initial inspection for Mr. Scism and advised him to let Mr. Dellinger know of his possible damage. Some of the Dellinger field next to the road across from the treated pasture seemed to show some possible damage.
12. On August 14, 2017, Complainant's Inspector Clark went to the Dellinger field. Agronomist, Steve Dillon, North Carolina Department of Agriculture and Consumer Services inspected the field for possible problems other than herbicide damage. During inspection, some insect damage and evidence of possible herbicide damage was noted. Photos and a sample of soybean vegetation was collected.
13. Complainant's Inspector Clark collected the following samples during his investigation:
  - CC 014 Scism Soybeans
  - CC 015 Vegetation from SSC treated field
  - CC 016 Dellinger Soybeans

14. Laboratory analysis of the samples collected by Complainant's Inspector Clark revealed the following results:

Sample No	Type	Type	Location	Dicamba+3,6 DCSA	5OH-Dicamba	Triclopyr	2,4-D
CC-14	Veg	Non-Target	Scism Beans	ND	ND	ND	ND
CC-15	Veg	Target	Grayson Field	4.74ppm	ND	2.73ppm	6.87ppm
CC-16	Veg	Non-Target	Dellinger Beans	ND	ND	ND	ND

15. The pesticides involved in the application at issue were as follows:

Brash Herbicide, 2,4-D and Dicamba, EPA Reg. No. 1381-202, Class I  
Danger

Remedy Ultra, triclopyr, EPA Reg. No. 62719-552

16. The labels for the pesticides involved read as follows:

Brash Herbicide:

Do not apply under circumstances where spray drift may occur to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use or consumption. Susceptible crops include, but are not limited to, cotton, okra, flowers, grapes (in growing stage), fruit trees (foliage), soybeans (vegetative stage), ornamentals, sunflowers, tomatoes, beans, and other vegetables, or tobacco. These plants are most sensitive to BRASH® during their development or growing stage. Small amounts of spray drift that might not be visible may injure susceptible broadleaf plants. Agriculturally approved drift-reducing additives may be used. Do not use aerial equipment to apply BRASH® when sensitive crops and plants are growing in the vicinity of area to be treated. Do not treat areas where either possible downward movement into the soil or surface washing may cause contact of BRASH® with the roots of desirable plants such as trees and shrubs.

Remedy herbicide:

Do not apply Remedy Ultra directly to, or otherwise permit it to come into direct contact with, cotton, grapes, peanuts, soybeans, tobacco, vegetable crops, flowers, citrus, or other desirable broadleaf plants.

Do not permit spray mists containing Remedy Ultra to drift onto such plants.

17. This case file was forwarded to Dr. Alan C. York, Professor Emeritus, North Carolina State University Crop and Soil Sciences. Dr. York concluded, "I reviewed the information you sent on the Scism Farm investigation (IR 2017-093), including the pictures taken by C. Clark. To a reasonable degree of scientific certainty, injury symptoms on the soybeans were caused by an auxin herbicide. I suspect the prime suspect was dicamba."

18. As a result of these findings, Complainant alleges that Respondent, either by acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

19. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

20. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Five Hundred Dollars (\$1,500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Five Hundred Dollars (\$1,500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Five Hundred Dollars (\$1,500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 20(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 20(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

21. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

22. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

23. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.



WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Mark A. Greene

Mr. Mark A. Greene  
Southern States, Waco Service  
2330 Cherryville Road  
Waco, NC 28169

10-1-18  
Date

James W. Burnette, Jr.

James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/29/2018  
Date

Chi McLennan

Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

10/30/2018  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

Paul Smyly  
Chairman





STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD

COUNTY OF WAKE

File No. IR2017-94

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

JAMES STEVEN AUSTIN,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and James Steven Austin, Respondent.

1. At all times pertinent hereto, Respondent held Private Pesticide Applicator Certification No. 038-54420.
2. On August 8, 2017, Complainant's North Carolina Pesticide Inspector, Mr. Chris Smith, investigated a possible drift complaint in Anson County. The complainant, Mr. George Truett Wright, was concerned that a pesticide application on the neighboring property had drifted onto his hay field.
3. Complainant's Inspector Smith contacted Mr. Wright and agreed to meet on the morning of August 9, 2017, at his daughter's address located at 446 George Wright Road in Polkton, North Carolina. Complainant's Inspector Smith met with Mr. Wright and his daughter, Sophia Wright Furr. Mr. Wright explained that the neighboring property was being farmed by Respondent and that a recent herbicide application has drifted into his hayfield causing damage. Mr. Wright's concern was that of a possible drift application because he wanted to sell the hay from his fields.
4. Mr. Wright stated to Complainant's Inspector Smith that this was not the first time this has happened, because it has occurred at least three or four other times over the last five years. Mr. Wright stated he has contacted Respondent about the drift, but he did receive a favorable response.

5. Mr. Wright stated there had been two applications in the last month to the farmed property, and the most recent application took place about a week prior to their meeting; presumably July 31- August 4.
6. Mr. Wright and his daughter stated the primary areas of drift appear to be where the spray equipment passed over the fence/property line during a turn. Mr. Wright agreed to proceed with an investigation process and agreed for a series of soil samples to be taken in order to resolve and stop the issue.
7. Complainant's Inspector Smith tested in areas that demonstrated signs of possible pesticide drift. Soil samples were collected from the area closest to George Wright Road starting from the furthest point from the target field and working Inspector Smith's way into the target field of soybeans.
8. Complainant's Inspector Smith went towards the back portion of the property following the fence line and sampled another area that showed signs of possible drift from the neighboring field. More samples were taken from Mr. Wright's property and the soybean field.
9. Mr. Wright and his daughter told Inspector Smith that they had an additional piece of property situated across the street at 446 George Wright Road address and is next to a neighbor's house at 330 George Wright Road. At this location, two more samples from an area that showed possible signs of herbicide drift were taken.
10. Complainant's Inspector Smith stopped by the Austin farm located at 5716 Pleasant Hill Church Road in Marshville. Complainant's Inspector Smith was able to discuss Mr. Wright's concerns with Respondent, who is the son to Ted Steven Austin (owner of the farm).
11. Respondent stated that he was the applicator on the pieces of property off George Wright Road. He stated he recently made an application of Liberty 280 SL Herbicide on his soybeans for weed control. Respondent also stated he made an application of a wildlife repellent just before the herbicide treatment to help lower crop damage from wildlife. Application records were provided for those areas.
12. Complainant's Inspector Smith reviewed the application records made by Respondent. The application in question is recorded as *Williams Property 7-27 as noted in P52 and P53*. After reviewing the application records, Complainant's Inspector Smith discussed recordkeeping requirements, container disposal, container recycling programs, and agreed to forward Respondent contact information regarding available programs.
13. After reviewing the weather data and information of the weather tower closest to the area, wind directions were variable in both direction and speed throughout the day. Wind speeds were variable up to 12 mph with a daily average listed at 2 mph and no precipitation was accumulated that day according to the data provided. It is concluded that possible herbicide drift might have occurred from either the spray equipment passing over the fence/property line during the turns and/or from the variable wind speed and direction throughout the stated application day.

14. Laboratory analysis of the samples collected during the investigation revealed the following:

Sample No	Type	Type	Location	Glufosinate
CS-62	Soil	Nontarget	Near rd	ND
CS-63	Soil	Nontarget	Near Rd	ND
CS-64	Soil	Target	Near Rd	ND
CS-65	Soil	Nontarget	In Hayfield	ND
CS-66	Soil	Target	Soybean Field	0.262 ppm
CS-67	Soil	Nontarget	Near Ditch	ND
CS-68	Soil	nontarget	Near Ditch	ND
CS-69	Soil	Target	Near Ditch	BQL<0.1ppm
CS-70	Soil	Nontarget	Across St	ND
CS-71	Soil	target	Across St	ND

15. The pesticide involved in this investigation was:

Liberty 280 SL Herbicide, Glufosinate-ammonium; 24.5%,  
EPA Reg. No. 264-829 Class III Caution

16. The labeling statement reads as follows:

**SPRAY DRIFT MANAGEMENT**

**Spray Drift Restrictions**

Spray drift may result in injury to non-target crops or vegetation. To avoid spray drift, do not apply when wind speed is greater than 10 MPH or during periods of temperature inversions. Do not apply when weather conditions, wind speed, or wind direction may cause spray drift to non-target areas.

**AVOIDING SPRAY DRIFT AT THE APPLICATION SITE IS THE RESPONSIBILITY OF THE APPLICATOR.**

- All aerial and ground application equipment must be properly maintained and calibrated using appropriate carriers.
- For all non-aerial applications, wind speed must be measured adjacent to the application site, on the upwind side, immediately prior to application

17. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443(b)

It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

18. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private applicator's certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-440

(b) The Board . . . may require the certification and recertification of private applicators . . . and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C.G.S. § 143-469

(d) A civil penalty of not more than five hundred dollars (\$500.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

19. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 19(c) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 19(c) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

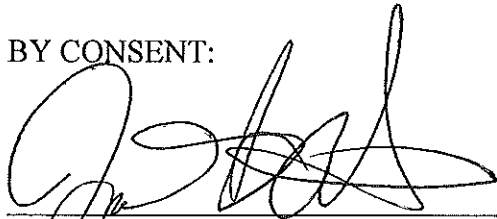
20. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

21. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

22. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

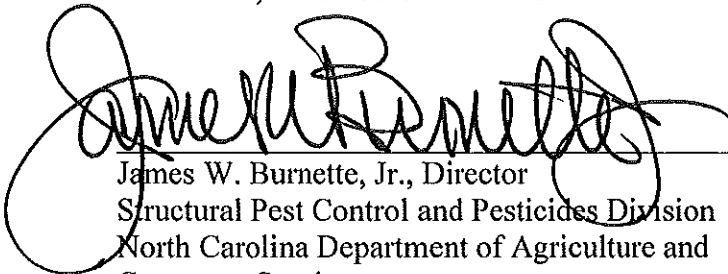
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



James Steven Austin  
5716 Pleasant Hill Church Rd  
Marshville, North Carolina 28103

8-13-18  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

8/20/2018  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

8-20-2018  
Date

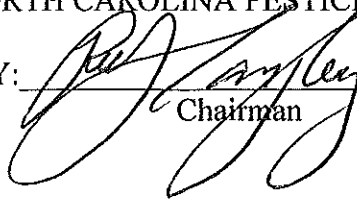
\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



IR2017-094

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

James Steven Austin ,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

James Steven Austin, Respondent

Dwight E. Seal, Western Field Manager



STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

ADAM WHITE,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-095(B)

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Adam White, Respondent.

1. At all times relevant hereto, Respondent, Adam White, held North Carolina Private Pesticide Applicator's License, No. 038-87126.
2. On August 11, 2017, Complainant's North Carolina Pesticide Inspector, Steven F. Gatton, received a call from Troy E. Coggins, Davidson County Extension Director concerning a soybean field that appeared to be damaged by dicamba. Mr. Coggins told Inspector Gatton that the field on Tall Pines Road in Lexington was farmed by James M. Jones and the only other field near was a soybean field that had been sprayed by Respondent. Mr. Gatton stated that Mr. Jones was going to call the Pesticide Section Office.
3. On August 14, 2017, Complainant's Inspector Gatton received a call from Jason H. Williams, Pesticide Operations Specialist with the North Carolina Department of Agriculture & Consumer Services, concerning the complaint that he received from James M. Jones. He told him that Mr. Jones was concerned that his soybeans had been damaged by exposure to dicamba.
4. Complainant's Inspector Gatton called Mr. Jones and scheduled a time for them to meet. Dwight E. Seal, Western District Manager, called Inspector Gatton and requested to assist with the investigation.

5. Complainant's Inspector Gatton and Mr. Seal went to the allegedly damaged field on Tall Pines Road in Lexington. After looking at the damage, Complainant's Inspector Gatton called Respondent to discuss the matter with him. Respondent told him that he had not applied any dicamba to his field on Tall Pines Road but would meet them at the Sheetz, located at 8283 Old US Highway 52 in Lexington within the next 10 minutes.

6. Instead of Respondent driving to the Sheetz, he sent Mr. James L. Leonard, who stated the damaged field of soybeans belonged to him. He told them that Mr. Jones and he farmed together and Mr. Jones had called Mr. Coggins and Mr. Williams on his behalf.

7. Respondent did arrive a few minutes later at the Sheetz, and then Mr. Jones soon afterward. They all proceeded to discuss the complaint. Respondent told them that he had planted some Roundup Ready 2 Xtend Soybeans and had applied Engenia Herbicide, EPA Reg. No. 7969-345, but he did not plant the soybeans or apply the herbicide to the field near Mr. Leonard's field. Inspector Gatton asked him if he had applied the product according to the labels and he told them that he had. Inspector Gatton also asked him if he had all three labels in his possession at the time of the application and if he had attended the Auxin Herbicides - Best Management Practices Training. Respondent told them that he had the label that was on the container. Complainant's Inspector Gatton explained to him that there was no record of him attending the required training and he was required to have all labels in his possession at the time of the application. Complainant's Inspector Gatton asked Respondent to e-mail a copy of his records.

8. On August 31, 2017, Complainant's Inspector Gatton called Respondent to inquire why he had not received his records. Respondent told the inspector that he was sorry that he had not sent them. They discussed his application of Engenia. Respondent told Complainant's Inspector Gatton that he did not have all the labels, had not attended the required class or signed up as an applicator on FieldWatch.

9. On September 18th, Complainant's Inspector Gatton received an e-mail with Respondent's records attached. According to the records he applied Buccaneer Plus Glyphosate Herbicide, EPA Reg. No. 55467-9 and Prefix Herbicide to the soybeans on Tall Pines Road on June 15, 2017 at rates of 1.2 pts and 1 qt. respectively. Respondent made a second application to the field on July 17, consisting of 1.2 pts. of Buccaneer Plus Glyphosate Herbicide, 1 pt. of Reflex Herbicide, EPA Reg. No. 100-993, .25 oz. of DuPont Classic, EPA Reg. No. 352-436 and 3 oz. of Lambda-Cy, EPA Reg. No. 70506-121.

10. The pesticide involved in this investigation was:

Engenia Herbicide, EPA Registration Number 7969-345 ai....Diglycolamine salt of Dicamba (3,6-dichloro-0-ansic acid)...42.8%, Class III Caution

11. The label statement for the pesticide involved reads as follows:

*Engenia Herbicide 24c*

**Training Requirements**

Prior to applying this product postemergence in-crop on dicamba-tolerant cotton or dicamba-tolerant soybeans for the 2018 growing season, all dicamba applicator(s) including commercial applicators, private applicators, and non-certified applicators working under their direct supervision must complete dicamba or auxin-specific training. Training must be completed annually before each growing season.

The training:

"Auxin herbicides – Best Management Practices" must be approved by the North Carolina Department of Agriculture and Consumer Services (NCDA&CS). For more information on this training, contact the NCDA&CS at 919-733-3556 or your local County Cooperative Extension Service office.

12. As a result of these findings, Complainant alleges that Respondent, either by acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. §143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

13. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private pesticide applicator's certificate and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. §143-440(b)

The Board . . . may require the certification and recertification of private applicators and . . . after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder . . .

N.C.G.S. § 143-469

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29) shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G. S. 143-460(29) only for willful violations.

14. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Five Hundred Dollars (\$500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Five Hundred Dollars (\$500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Five Hundred Dollars (\$500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 14(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 14(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

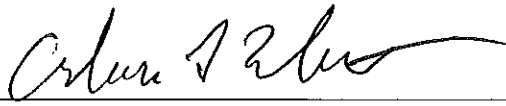
15. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

16. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

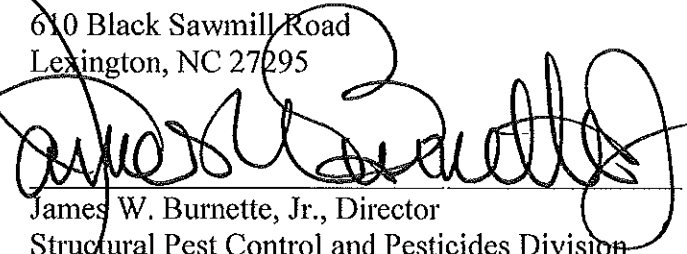
17. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

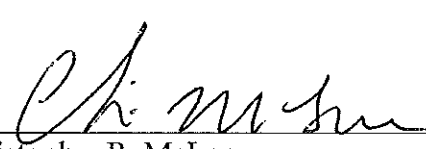
BY CONSENT:

  
Mr. Adam White  
Adam White Farm  
610 Black Sawmill Road  
Lexington, NC 27295

10/5/18  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/10/2018  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

10/10/2018  
Date

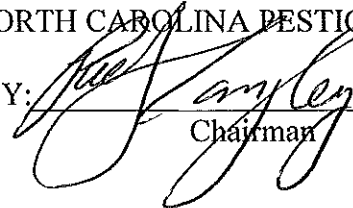
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman





STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

THOMAS L. JEFFERSON,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-100(A)

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Thomas L. Jefferson, Respondent.

1. At all times relevant hereto, Respondent, Thomas L. Jefferson, held North Carolina Pesticide Dealer's License, No. 037-4385, and operated at the facility of Meherrin Agricultural & Chemical in Belhaven, North Carolina.
2. On August 23, 2017, Complainant's North Carolina Pesticide Inspector John Colborne conducted a Restricted Use Pesticide ("RUP") sales record inspection of the Meherrin Agricultural & Chemical facility in Belhaven, North Carolina.
3. As part of the investigation, Mr. Bryant Paramore, an employee of Meherrin Agricultural & Chemical provided Complainant's Inspector Colborne with a copy of all 2017 RUP sales made to Mr. Marshall Spain of Greenville, North Carolina.
4. The sales invoice indicated that, on May 10, 2017, Respondent sold Mr. Marshall Spain a one-gallon container of Perm-Up 3.2 EC Insecticide, EPA Reg. No. 70506-9. The sales invoice and counter ticket for the sale in question did not include a pesticide license number, or expiration date.
5. A check of departmental records showed that Mr. Spain did not have a Private Pesticide Applicator certificate, dealer license, or commercial applicator license at the time of sale.

6. The pesticide involved in the investigation was:

Perm-Up 3.2 EC Insecticide (permethrin), EPA Reg. No. 70506-9, a pyrethroid insecticide, Class III, Caution.

7. The label statement for the pesticide involved reads as follows:

“RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision.”

8. As a result of these findings, Complainant alleges that Respondent, either by acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-451

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection;

(13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 NCAC 09L .1302

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

02 NCAC 09L .1305

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

(3) name of certified or licensed applicator

(4) certification or license number of certified or licensed applicator

(5) certification or license expiration date as shown on the certified or licensed applicator's certification card.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private pesticide applicator's certificate and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Four Hundred Dollars (\$1,400.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Four Hundred Dollars (\$1,400.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Four Hundred Dollars (\$1,400.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in

this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.


11. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

12. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

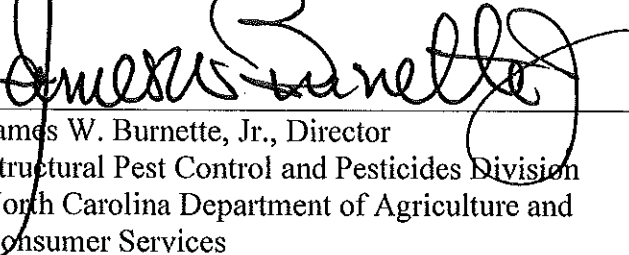
13. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

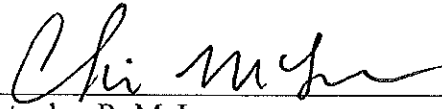
BY CONSENT:

  
Mr. Thomas L. Jefferson  
Meherrin Agricultural & Chemical  
5724 Sidney Road  
Belhaven, North Carolina 27810

9-24-2018  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

9-26-2018  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

9/26/2018  
Date

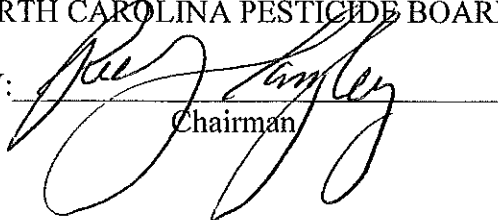
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APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



2017-100A

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Thomas L. Jefferson,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

MARSHALL T. SPAIN,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-100(B)

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Marshall T. Spain, Respondent.

1. At all times relevant hereto, Respondent, Marshall T. Spain did not possess a valid North Carolina pesticide license or certification.
2. On August 23, 2017, Complainant's North Carolina Pesticide Inspector John Colborne conducted a "RUP" sales record inspection of the Meherrin Agricultural & Chemical facility in Belhaven, North Carolina.
3. As part of the investigation, Mr. Bryant Paramore, an employee of Meherrin Agricultural & Chemical, provided Complainant's Inspector Colborne with a copy of all 2017 RUP sales made by Mr. Thomas L. Jefferson to Respondent.
4. The sales invoice indicated on May 10, 2017, Mr. Thomas L. Jefferson sold Respondent a one-gallon container of Perm-Up 3.2 EC Insecticide, EPA Reg. No. 70506-9. The sales invoice and counter ticket for the sale in question did not include a pesticide license number, or expiration date.
5. A check of departmental records showed that Respondent did not have a Private Pesticide Applicator certificate, dealer license, or commercial applicator license at the time of sale.

6. On August 23, 2017, Complainant's Inspector Colborne met with Respondent at his farm. Respondent acknowledged purchasing the one-gallon container of Perm-Up 3.2 EC Insecticide from Meherrin Ag & Chemical in Belhaven, North Carolina on May 10, 2017. Respondent stated that he applied the insecticide to the collards in his garden for the control of insects.

7. Following the investigation, Respondent obtained Private Pesticide Applicator, License No. 038-87247.

8. The pesticide involved in the investigation was Perm-Up 3.2 EC Insecticide (permethrin), EPA Reg. No. 70506-9, a pyrethroid insecticide, Class III, Caution.

9. The label statement for the pesticide involved reads as follows:

**"RESTRICTED USE PESTICIDE ... For retail sale to and use only by certified applicators or persons under their direct supervision."**

10. As a result of these findings, Complainant alleges that Respondent, either by acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-440(b)

The Board may...require the certification and recertification of private applicators, ...and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; ...

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;



11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private pesticide applicator's certificate and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) The Board may . . . require the certification and recertification of private applicators, and . . . after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; . . .

N.C.G.S. § 143-469

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G. S. 143-460(29)a only for willful violations.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Eight Hundred Dollars (\$800.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Eight Hundred Dollars (\$800.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Eight Hundred Dollars (\$800.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.

- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
  - (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.
- 13. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.
- 14. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.
- 15. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Marshall T Spain  
Mr. Marshall T. Spain  
3823 Spain Farm Lane  
Greenville, North Carolina 27858

9-25-18  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/1/2018  
Date

Chi McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

10-1-2018  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

Robert Langley  
Chairman



2017-100B

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Marshall T. Spain,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

AARON A. SMITH,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-104

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Aaron A. Smith, Respondent.

1. On September 11, 2017, Complainant's North Carolina Pesticide Inspector, Mr. Travis Snodgrass and Apiary Inspector, Mr. Lewis Cauble investigated a bee kill at the property of Robert Smith in Burke County, Morganton, North Carolina. Mr. Robert Smith was concerned that his bees came in contact with an insecticide after he noticed numerous dead bees at the hive entrance.
2. Mr. Robert Smith has fourteen (14) hives located at 2831 Irish Creek Road, Morganton, North Carolina. The hives are a mix of overwintered hives, nucs made from splits, and a few hives started from swarms. Mr. Robert Smith stated on Saturday, September 9, 2017, he noticed dead bees in front of most of the hives. He was worried that someone had sprayed nearby because there was more than a normal amount of dead bees lying about the ground, in front of the hives, and inside the hives on the bottom boards. Other bees were noticed with extended mouthparts walking around very sluggish.
3. The area in question had two nurseries within one mile of the bee yard. Both nurseries had applied insecticides toxic to bees. Rose Creek Nursery & Landscaping, 3265 Rose Creek Road, Morganton, North Carolina, is owned and operated by Respondent. Respondent's Private Pesticide Applicator license is 038-82060 expired on December 31, 2009.

5. Complainant's Inspector Snodgrass visited Rose Creek Nursery and asked Respondent if anyone with the company maintained a current pesticide license, and he said no. The nursery had a good bit of vegetation blooming that is attractive to foraging bees. Photos document numerous blooming Goldenrod plants.

6. Respondent confirmed to Complainant's Inspector Snodgrass that he grows trees in the field near the hives. He said he had applied Tengard SFR One Shot, EPA Reg. No. 70506-6; Permethrin, to the field on Friday, September 8, 2017, from 3:30 p.m. to 4:00 p.m. using an air blast sprayer. Respondent said he applied it for control of borers. He used about 2 quarts in 120 gallons and sprayed about 30-40 gallons in the field near the hives. Mr. Smith showed the inspector the sprayer he used to make the application. He said it was sunny and warm when he sprayed and probably got it on some flowers. Complainant's Inspector Snodgrass discussed laws, regulations, and label statements regarding pollinator protection and provided him with brochures.

7. Respondent was informed that the product he used was not labeled for use on field grown ornamentals. Additionally, the Tengard label prohibits the use of the product for where bees may be foraging plants for 3 days after treatment.

8. When Complainant's Inspector Snodgrass and Respondent drove around the field, the inspector noticed an abundant amount of flowering weeds under the trees that Respondent said he had sprayed. Many of the flowering weeds were Goldenrod and were directly beside or underneath the trees. Complainant's Inspector Snodgrass estimated the distance from the front of the field to the bee hives as being less than 100 yards. The back of the field had the most Goldenrod in bloom near the trees. While walking along the rows, Complainant's Inspector Snodgrass noticed several of the flowers had honeybees on them even during the rain. Complainant's Inspector Snodgrass obtained a non-target vegetation sample from these flowers. The sample site was located approximately 3 feet from cherry trees that Respondent said he had sprayed. It was also located approximately 240 yards from the beehives.

9. Complainant's Inspector Snodgrass collected bee samples and pollen samples from the hives at issues. Laboratory analysis of these samples detected carbaryl and 1-Naphthol a metabolite of carbaryl, which is highly toxic to bees and which had been applied to a neighboring nursery unassociated with Respondent. The samples were negative for permethrin, the active ingredient in the Tengard applied by Respondent.

10. On October 25th, 2017, Complainant's Inspector Snodgrass called Mr. Robert Smith and asked him how his bees were doing. He said they were doing just fine and that no more had died and he did not lose any of the hives.

11. The pesticides involved in this investigation were:

Tengard SFR One Shot; Permethrin...36.8%;  
EPA Reg. No. 70506-6; Class I Caution

12. The labeling statement for *Tenguard SFR One Shot* reads as follows::

For use by commercial applicators as an insecticide on ornamentals grown in greenhouse and interiors capes, for perimeter insect control on lawns, ornamental trees and shrubs around residential, institutional, public, commercial and industrial buildings, parks, recreational areas and athletic fields, and for use on buildings/structures. For control of subterranean termites: For use by individuals/firms licensed or registered by the state to apply termiticide products. States may have more restrictive requirements regarding qualifications of persons using this product. Consult the pest control regulatory agency of your state prior to use of this product.

**Environmental Hazards**

This product is highly toxic to bees exposed to treatment and for 3 days following treatment. Do not apply this pesticide to blooming, pollen-shedding or nectar-producing parts of plants if bees may forage on the plants during this time period. The 3 day limitation does not apply if the applicator operates in a state with a formal, state-approved bee protection program, and the applicator follows all applicable requirements of the state-approved program designed to ensure that managed bees are not present in the treatment area during this time period.

13. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443(b)

It shall be unlawful:

- (3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a pesticide license/certification and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(d) A civil penalty of not more than five hundred dollars (\$500.00) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Five Hundred Dollars (\$500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Five Hundred Dollars (\$500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Five Hundred Dollars (\$500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be



deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

16. As further consideration, and in a display of good faith, Respondent has registered with Fieldwatch.

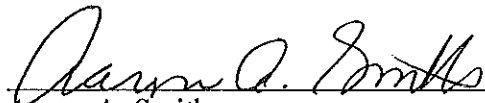
17. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

18. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

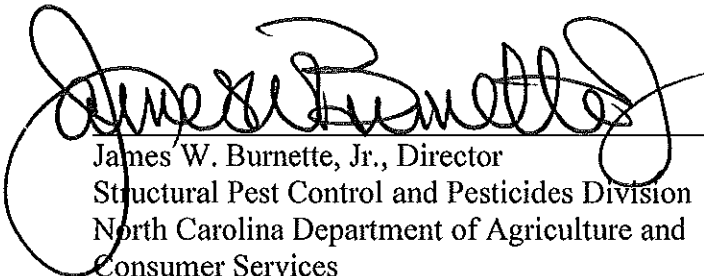
19. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Aaron A. Smith  
Rose Creek Nursery & Landscaping  
3215 Rose Creek  
Morganton, North Carolina 28655

7.4.18  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

7-17-2018  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

7/17/2018  
\_\_\_\_\_  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:  \_\_\_\_\_

Chairman



NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Aaron A. Smith,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Aaron Smith, Respondent

Dwight E. Seal, Western Field Manager



STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-105

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

LUTHER BALL,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Luther Ball, Respondent.

1. At all times relevant hereto, Respondent, Luther Ball, held a North Carolina Private Pesticide Applicator's License, No. 038-56713, but was not certified in the fumigant category.
2. On July 27, 2017, a records check was completed by Complainant's North Carolina Pesticide Inspector, Bruce Nicely, at the location of AgCare Products Inc. located in Candler, North Carolina. During the inspection, it was found that Respondent had purchased the fumigant, Pic-Clor 80 EPA Reg. No. 11220-36-87994. Respondent held an active North Carolina Private Pesticide Applicator License No. 038-56713, but did not have the required fumigation certification to purchase and use the fumigant.
3. In August 2017, Complainant's North Carolina Pesticide Inspector, Charles Clark contacted the Madison County Agriculture Extension Director, Ross Young, to discuss Respondent. Mr. Young stated Respondent was a strawberry grower. Arrangements were made for Respondent to take the fumigation test before an inspection was made at his farm. Respondent attempted the fumigation test at the Waynesville location on August 3, 2017, which he was not able to pass.

4. On September 14, 2017, Complainant's Inspector Clark met Respondent at his farm. All the requirements of fumigation were discussed as well as other pesticide requirements. Respondent stated that he had purchased the fumigant because his plant supplier had told him he may want to treat the ground before planting.

5. Respondent had purchased a two shank single row bedder from the Mountain Research Station, with Kaleb Rathbone as Director. It was serviced and checked by TriEst Ag Group, Inc. employee, Ben Hinson.

6. During the service by TriEst Ag Group, Inc. the machine was set up for the application including flow rates. Respondent had purchased the fumigate to the best of his memory around May of 2016, from Doug Robertson of AgCare Products, Inc. located in Candler, North Carolina and applied it sometime in August of 2016.

7. Respondent stated that he thought the machine was set to deliver 40 pounds of product per acre. The remainder of the product was returned to Doug Robertson. Respondent stated he was never told by anyone involved, (the Dealer nor the TriEst employee), that the product required additional training.

8. Respondent understood that it was his responsibility to follow requirements of the label. The treatment was for 1/4 acre of strawberries, approximately 5000 plants. No non-family employees were involved in the application. Respondent was very helpful during the inspection/investigation and was clearly concerned about the violations.

9. The pesticide involved in this investigation was:

Pic-Chlor 80,  
EPA Reg. No. 11220-36-87994, a multi-purpose liquid fumigant,  
Class I, Danger.

10. The label statement for the pesticide involved reads as follows:

**RESTRICTED USE PESTICIDE**

**DUE TO ACUTE TOXICITY AND CARCINOGENICITY**

For retail sale to and use by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification.

**DIRECTIONS FOR USE**

**Restricted Use Pesticide**

*It is a violation of Federal law to use this product in a manner inconsistent with its labeling. Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only handlers may be in the application block from the start of the application until the entry restricted period ends, and in the buffer zone during the buffer zone period. For any requirements specific to your State or Tribe, consult the agency responsible for pesticide regulation.*

### **Certified Applicator Training**

Any certified applicator supervising a soil fumigant application must have successfully completed one of the soil fumigant training programs listed on the following EPA website [www.epa.gov/fumiganttraining](http://www.epa.gov/fumiganttraining) for the active ingredient(s) in this product. The training must be completed in the time frames listed on the website. The FMP must document the date and location where the soil fumigant training program was completed.

### **Air Purifying Respirator Availability:**

The employer of any handler must confirm that an air-purifying respirator and appropriate cartridges/canisters of the type specified in the *PPE* section of this labeling are immediately available for each handler who will wear one (see *Respirator Fit Testing, Medical Qualification, and Training* section for additional requirements).

Exception: Air-purifying respirators do not need to be made available for handlers performing fumigant site monitoring tasks outside of the buffer zone. Cartridges or canisters must be replaced when odor or sensory irritation from this product becomes apparent during use, if the measured concentration of chloropicrin is greater than or equal to 1.5 ppm, or after 8 hours of cumulative use, whichever occurs first.

### **Respirator Fit Testing, Medical Qualification, and Training:**

Using a program that conforms to OSHA's requirements (see 29 CFR Part 1910.134), employers must verify that any handler who uses a respirator is:

- Fit-tested and fit-checked,
- Trained, and
- Examined by a qualified medical practitioner to ensure physical ability to safely wear the

### **Buffer Zone Requirements**

A buffer zone must be established for every fumigant application. The following describes the buffer zone requirements: An area established around the perimeter of each application block.

### **Posting Fumigant Buffer Zones**

- Posting of a buffer zone is required unless there is a physical barrier that prevents bystander access to the buffer zone.
- Buffer Zone signs must be placed along or outside the perimeter of the buffer zone, at all usual points of entry and along likely routes of approach from areas where people not under the owner's control may approach the buffer zone.

### **Site Specific Fumigant Management Plan (FMP)**

Prior to the start of application, the certified applicator supervising the application must verify that a site-specific FMP exists for each application block. In addition, an agricultural operation fumigating multiple application block or blocks is captured in subsequent sections. The FMP must be prepared by the certified applicator, the site owner, registrant, or other party.

### **Record-Keeping Procedures**

The owner of the application block as well as the certified applicator supervising the application must keep a signed copy of the site-specific FMP for 2 years from the date of application.

11. As a result of these findings, Complainant alleges that Respondent, either by acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private pesticide applicator's certificate and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-440(b)

The Board may...require the certification and recertification of private applicators, ...and, after opportunity for a hearing, may suspend, revoke or modify the certification for violation of any provision of this Article, or any rule or regulation adopted thereunder; ....



N.C.G.S. § 143-469(d)

Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G. S. 143-460(29)a only for willful violations.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of Five Hundred Dollars (\$500.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Five Hundred Dollars (\$500.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Five Hundred Dollars (\$500.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

16. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

Luther Ball  
Mr. Luther Ball  
1030 Meadows Town Road  
Marshall, North Carolina 28753

10-4-18  
Date

James W. Burnette, Jr.  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

10/12/18  
Date

Christopher R. McLennan  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

10/10/2018  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 14<sup>th</sup> day of November, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

Ray Hingle  
Chairman





STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA

PESTICIDE BOARD

COUNTY OF WAKE

File No. IR2017-048

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

DAVID V. WALTON,

Respondent.

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and David V. Walton, Respondent.

1. At all times relevant hereto, Respondent, David V. Walton, held North Carolina Private Pesticide Applicator's License, No. 038-28587.
2. On June 7, 2017, Complainant's North Carolina Pesticide Inspector, Doug Bullard, investigated a possible drift complaint in Cumberland County. The complainant, Mr. Richard Trogdon, was concerned that a pesticide application sprayed on the field that adjoins his property had damaged his yard and garden.
3. Complainant's Inspector visited Mr. Trogdon at his address located on 2784 Gainey Road, Cumberland County, Fayetteville, North Carolina on June 7, 2017 and Mr. Trogdon showed him the damaged plants in his yard.
4. Complainant's Inspector photographed and sampled vegetation and soil from Mr. Trogdon's yard and the adjoining field.
5. Complainant's Inspector later discovered that parts of the field adjacent to Mr. Trogdon's yard were tended by Mr. William Pate, and Respondent, Mr. David V. Walton.

6. Complainant's Inspector met with Respondent and Mr. Austin P. Locklear on June 14, 2017, at which time they informed him that Mr. Locklear made an application of Gramoxone SL 2.0 and Prowl H20 in the field adjacent to Mr. Trogdon's yard on June 1, 2017, and that he was supervised by Respondent. Respondent stated the application was made early in the morning that day and there was no wind at the time of application.

7. As part of the investigation, Dr. Alan York, Professor Emeritus, NCSU Crop and Soil Sciences, was requested to view photographs taken during the investigation. Dr. York commented, "I reviewed this case (IR2017-048; Richard Trogdon investigation), including the photos taken by Doug Bullard. To a reasonable degree of scientific certainty, injury symptoms to the sweet corn, blueberries, and grass were caused by paraquat."

8. The pesticide involved in the application was:

Gramoxone SL 2.0 Herbicide (Paraquat dichloride), EPA Reg. No. 100-1431, a bipyridylum, contact, non-selective herbicide, Class I, Danger/Poison.

9. The label statement for the pesticide involved reads as follows:

*Gramoxone SL 2.0 Herbicide:*

**"Environmental Hazards...Drift...**Do not apply under conditions involving possible drift to food, forage, or other plantings that might be damaged or the crops thereof rendered unfit for sale, use, or consumption. Do not apply when weather conditions favor drift from treated areas.

10. As a result of these findings, Complainant alleges that Respondent, either by acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private pesticide applicator's certificate and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G. S. 143-460(29)a only for willful violations.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

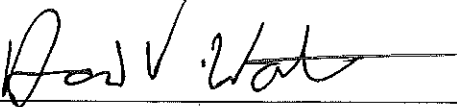
- (a) That Respondent agrees to pay the sum of Six Hundred Dollars (\$600.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denies he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein,
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of Six Hundred Dollars (\$600.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Six Hundred Dollars (\$600.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(d) of this Agreement.

- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
  - (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.
- 13. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.
- 14. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.
- 15. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

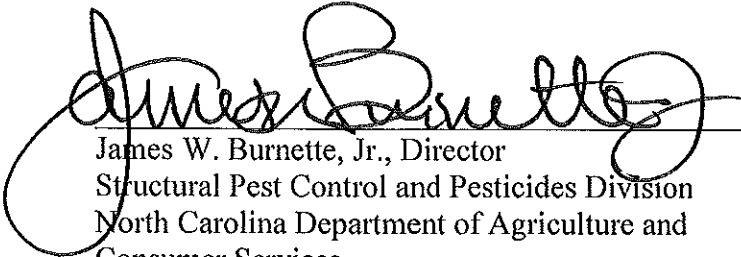


WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

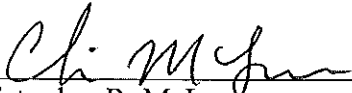
BY CONSENT:

  
Mr. David V. Walton  
5465 NC 20 West  
Lumber Bridge, NC 28357

12/11/18  
Date

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

1-7-2019  
Date

  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

12/17/2018  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 8<sup>th</sup> day of January

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



IR2017-048

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

David V. Walton,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

David V. Walton, Respondent  
Patrick N. Farquhar, Eastern Field Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

ROBERT CRAVEN MILLICAN,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-080

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant and Robert Craven Millican, Respondent.

1. At all times relevant hereto, Respondent, Robert Craven Millican, held Commercial Pesticide Applicator License No. 026-12834, and was an employee of Crop Production Services in Erwin, North Carolina.
2. On July 19, 2017, Complainant's North Carolina Pesticide Inspector Doug Bullard met with Ms. Terri Farmer regarding her allegation that Mr. Trent C. Wilson had applied a pesticide to the soybean field next to her yard that resulted in damage to some of her plants.
3. Ms. Farmer stated the field was sprayed on July 13 or July 14, 2017, and she started noticing damage on July 16, 2017. Complainant's Inspector Bullard photographed and sampled a crape myrtle tree at the corner of Ms. Farmer's property. Inspector Bullard observed a lot of discoloration of leaves on a crape myrtle tree at the corner of Ms. Farmer's property and many of the leaves had fallen off the tree.
4. Complainant's Inspector Bullard photographed and sampled Mr. Wilson's soybean field. The weeds and grass in the soybean field were dying.

5. On July 19, 2017, Complainant's Inspector Bullard met with Mr. Wilson, who stated he had hired Crop Production Services ("CPS") from Erwin, North Carolina to make the application for him.

6. On July 19, 2017, Complainant's Inspector Doug Bullard went to CPS in Erwin, North Carolina and spoke with Mr. Adam Byrd about the complaint. Mr. Byrd provided a copy of the application record for the field in question. The record indicated that Liberty 280 SL and Prefix were the herbicides applied by Respondent on July 13, 2017.

7. On July 19, 2017, Complainant's Inspector Doug Bullard met with Respondent and he said there was nothing unusual about the application and everything went as normal. Inspector Bullard photographed the application equipment.

8. Dr. Alan C. York, Professor Emeritus, NC State University Crop and Soil Sciences looked at the photographs in this case and commented the following, "I have reviewed the information sent on the Terri Famer investigation (IR2017-080), including the pictures taken by Inspector Doug Bullard. Three active ingredients are in the mixture of Liberty and Prefix (glufosinate, fomesafen, and s-metolachlor). S-metolachlor would not cause the symptoms observed on the crepe myrtle. However, both glufosinate and fomesafen are contacts and either could produce symptoms similar to those observed. Hence, to a reasonable degree of scientific certainty, I believe the injury symptoms on the crepe myrtle were caused by fomesafen and/or glufosinate.

9. Complainant's Inspector Bullard collected the following samples for testing:

**SAMPLE INDEX**

DB-037	non-target vegetation from Terri Farmer yard
DB-038	non-target soil from Terri Farmer yard
DB-039	target vegetation from Trent C. Wilson soybean field
DB-040	target soil from Trent C. Wilson soybean field

10. Laboratory analysis of the samples disclosed the following:

**Lab Results**

	<u>S-Metolachlor</u>	<u>Fomesafen</u>	<u>Glufosinate-ammonium</u>
DB-37 Non-target vegetation, Farmer yard	ND	0.9 ppb	ND
DB-38 Non-target soil, Farmer yard	ND	0.6 ppb	ND
DB-39 Target vegetation, Wilson soybean field	ND	0.013 ppm	32.7 ppm
DB-40 Target soil, Wilson soybean field	1.01 ppm	0.095 ppm	1.12 ppm

11. The pesticides involved in this investigation are:

Liberty 280 SL Herbicide (glufosinate-ammonium), EPA Reg. No. 264-829, a nonselective, postemergent, contact herbicide, Class II, Warning.

Prefix Herbicide (s-metolachlor, fomesafen), EPA Reg. No. 100-1268, a post-emergent herbicide, Class II, Warning

12. The label statement for the pesticides involved reads as follows:

*Liberty 280 SL Herbicide:*

**"DIRECTIONS FOR USE ... APPLICATION AND MIXING PROCEDURES ... DO NOT** apply when winds are gusty, or when conditions will favor movement of spray particles off the desired spray target. ... **SPRAY DRIFT MANAGEMENT ...** Do not apply when weather condition, wind speed, or wind direction may cause drift to non-target areas. ... Sensitive Areas: ... Do not apply under any circumstances where possible drift to unprotected persons or to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use, or consumptions can occur."

*Prefix Herbicide:*

**"PRECAUTIONARY STATEMENTS ... Environmental Hazards ...** Do not apply when weather conditions favor drift from target area. ..."

13. As a result of these findings, Complainant alleges that Respondent, either by acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443

(b) It shall be unlawful:

(3) For any person to use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

02 NCAC 09L .1404

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

14. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private pesticide applicator's certificate and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

15. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent denied he is guilty of any willful violation of the North Carolina Pesticide Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;
- (c) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (d) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Dollars (\$1,000.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
  - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 15(d) and waives said right by consenting to the terms of this Agreement.
  - (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 15(d) of this Agreement.
  - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (e) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be

deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

16. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

17. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

18. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

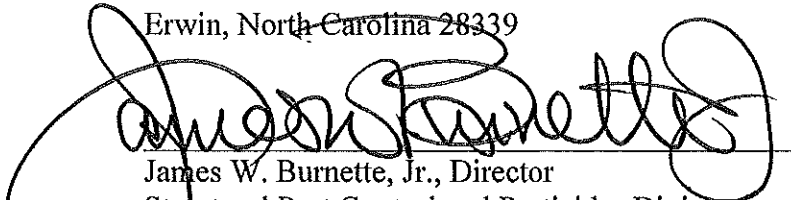
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



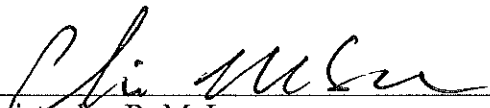
Mr. Robert Craven Millican  
Crop Production Services  
8581 US 421 South  
Erwin, North Carolina 28339

10/30/18  
Date



James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

11/14/2018  
Date



Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

11/13/2018  
Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 8<sup>th</sup> day of January, 201<sup>9</sup>8.

NORTH CAROLINA PESTICIDE BOARD

BY:   
Chairman





NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Robert Craven Millican,

**Respondent,**

Supplemental Information

The following individuals were involved in the settlement negotiations of the above-captioned matter:

Robert Craven Millican, Respondent

Patrick N. Farquhar, Eastern Field Manager



STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

SOUTHERN AGRICULTURAL  
INSECTICIDES, INC.,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD

File No. IR2017-110

SETTLEMENT AGREEMENT

---

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Southern Agricultural Insecticides, Inc., Respondent.

1. At all times relevant hereto, Richard Baxter held a North Carolina Pesticide Dealer's License, No. 037-3685 for Respondent, Southern Agricultural Insecticides, Inc., in Hendersonville, North Carolina.

2. Complainant's North Carolina Pesticide Inspector Travis Snodgrass was contacted by Mr. Walter Manus with questions about obtaining a certification in the soil fumigation category. On September 26, 2017, Complainant's Inspector Snodgrass traveled to The Golf Club at Ballantyne located in Charlotte, and met with Mr. Manus. During the meeting, Mr. Manus indicated that he had already purchased and received the fumigant, Basamid Granular, from Respondent on September 25, 2017.

3. At the time the fumigant was sold to Mr. Manus, he held Commercial Pesticide Applicator License No. 026-28901, but was not certified in the category of soil fumigation. When Mr. Manus reviewed the label for the purchased fumigant, he read that the use of the product required certification in the fumigation category. Complainant's Inspector Snodgrass instructed Mr. Manus on how to obtain certification in the fumigant category. Mr. Manus took his soil fumigation exam on September 28, 2017.

4. On October 3, 2017, Complainant's Inspector Snodgrass provided Complainant's North Carolina Pesticide Inspector Bruce Nicely with information regarding the fumigant sale. A copy of the sales invoice was forwarded to Complainant's Inspector Nicely on October 4, 2017, which confirmed that the purchase of the soil fumigant was made to Mr. Manus prior to him receiving certification in the soil fumigation category.

5. Complainant's Inspector Nicely met with Mr. Richard Baxter, the licensed pesticide dealer for Respondent. Mr. Baxter confirmed that his firm had sold the fumigant product to Mr. Manus at The Golf Club at Ballantyne on September 25, 2017. Mr. Baxter stated the sale had been conducted by an outside salesperson, David Wren, who works under his pesticide dealer's license.

6. Previously, on August 24 and August 28, 2017, Complainant's Inspector Nicely met with Mr. Baxter and provided him with a copy of Complainant's letter and information explaining the North Carolina requirements that licensed pesticide dealers confirm the purchasing individual is certified in the category of soil fumigation before a sale can be made. This requirement was explained and two copies of the letter were left with Mr. Baxter for sharing with his sales staff.

7. Mr. Baxter stated to Complainant's Inspector Nicely that he had not reviewed the requirements with the outside sales staff until October 3, 2017, after receiving information that the sale to Mr. Manus was being investigated. Therefore, the need to verify the purchasing individual's certification in the category of soil fumigation before a purchase can be completed was not explained to the outside sales staff of Respondent until after the sale of the soil fumigant had been made to Mr. Manus.

8. The pesticide involved in the application was Basamid G, Al-Dazomet EPA Reg No. 548-9027-70052.

9. The label statement for the pesticide involved reads as follows:

**RESTRICTED USE PESTICIDE**

For retail sale to and use by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification.

10. As a result of these findings, Complainant alleges that Respondent, either by acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-451

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

(13) Provided or made available any restricted use pesticide to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee or an employee under the direct supervision of one of the aforementioned certified or licensed applicators.

02 NCAC 09L .1302

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

11. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private pesticide applicator's certificate and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(b) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

12. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

(a) That Respondent agrees to pay the sum of Two Thousand One Hundred Dollars (\$2,100.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;

(b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of Two Thousand One Hundred Dollars (\$2,100.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of Two Thousand One Hundred Dollars (\$2,100.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 12(c) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 12(c) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

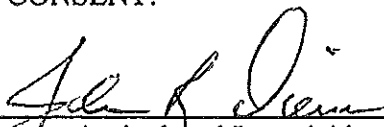
13. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

14. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

15. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

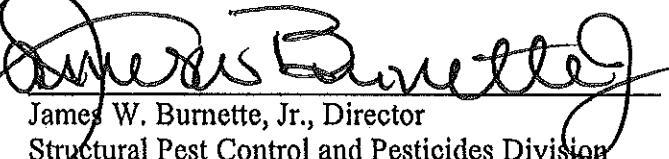
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:

  
Southern Agricultural Insecticides, Inc.  
PO Box 429  
Hendersonville, North Carolina 28793  
By: Mr. John R. Diem, President of  
Southern Agricultural Insecticides, Inc.

Date

1/4/18

  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

Date

1-7-2018

\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

Date

\*\*\*\*\*

APPROVED AND ORDERED FILED,

this the 8<sup>th</sup> day of January, 2019.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman







STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,

Complainant,

v.

RONALD D. GRAVES,

Respondent.

BEFORE THE NORTH CAROLINA  
PESTICIDE BOARD  
File No. IR2017-117

SETTLEMENT AGREEMENT

PURSUANT TO N.C. Gen. Stat. §§ 150B-22 and 150B-41(c) which express the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, and upon final approval by the North Carolina Pesticide Board (Board), this Settlement Agreement is made between the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services, Complainant, and Ronald D. Graves, Respondent.

1. At all times relevant hereto, Respondent had an expired commercial pesticide license (No. 026-4079) and operated as the president and responsible license holder of Woodtreaters, Inc. in Rocky Point, North Carolina.
2. On November 15, 2017, Complainant's North Carolina Pesticide Inspector Jimmy Merritt, while preparing for a routine bulk tank storage inspection at Woodtreaters, Inc., located at 224 Sawdust Rd, Rocky Point, North Carolina, found that Respondent's commercial pesticide license had expired on December 31, 2016.
3. Respondent told Complainant's Inspector Merritt that he is the president of the company and was unaware his pesticide license had expired. Complainant's Inspector Merritt explained that Respondent did not earn the required amount of recertification credits to renew his license and he would need to retest or have someone else within the company to obtain a pesticide license.
4. Complainant's Inspector Merritt met with Mr. Pat Morris, Plant Manager, at Woodtreaters, Inc. Mr. Morris confirmed that the company had been treating lumber.

5. The pesticides involved in the applications were as follows:

Wolman E (copper ethanolamine complex, tebuconazole, propiconazole),  
EPA Reg. No. 75506-10, a wood preservative, Class I, Danger

BARamine (didecyl dimethyl ammonium bicarbonate, dodecyl dimethyl  
ammonium carbonate),  
EPA Reg. No. 6836-304, a wood preservative, Class I, Danger

6. Mr. Morris provided Complainant's Inspector Merritt with four (4) treatment records, which represented one treatment per calendar quarter in 2017. Mr. Morris also provided four (4) sales records for the treatment of lumber, which represent one sale per calendar quarter. These records show that lumber was treated and sold throughout 2017. Pesticide labels were provided for the product used.

7. Mr. Morris indicated that the treatment records were for work done on a contract basis; they do not own any of the wood that they treat. Mr. Morris stated the primary customer is Maritime Forest Product, Inc., which is a wholesaler and they own and sell the lumber, they ship the lumber to Woodtreaters, Inc. for treatment and then the lumber is shipped to Maritime Forest Inc. customers. Mr. Morris stated they occasionally provide Treatment Service Only (TSO) for other smaller customers.

8. Complainant's Inspector Merritt administered the Wood Treatment Pest Control exam to Mr. Morris on-site and later mailed it to Raleigh, North Carolina with the exam fee. Mr. Morris assured Inspector Merritt that no lumber would be treated until he obtained his pesticide license.

9. On Friday, November 17, 2017, Mr. Morris was notified that he passed the exam and he completed Form #1 and paid the license fee to get issued.

10. For the first ten months in 2017, the Woodtreaters, Inc. commercially treated and sold lumber to consumers without a valid commercial pesticide license. Currently, the company is now in compliance as Mr. Patrick L. Morris holds an active Commercial Pesticide Applicator License No. 026-35579 with a certification in category T (wood preservation and wood products treatment) for the company.

11. As a result of these findings, Complainant alleges that Respondent, either by acts and/or omissions violated the following provisions of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-452

(a) No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator.

N.C.G.S. § 143-456

(a) The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

- (4) Operated in a faulty, careless, or negligent manner;
- (5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
- (15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

02 NCAC 09L .0503

(a) The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.

12. Each of the above violations of the North Carolina Pesticide Law and/or Regulations is subject to action against a private pesticide applicator's certificate and/or a civil penalty, which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469

(d) Notwithstanding any other provision of this Article, the maximum penalty which may be assessed under this section against any person referred to in G.S. 143-460(29)a shall not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against a person referred to in G. S. 143-460(29)a only for willful violations.

13. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;

- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
- (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 13(c) and waives said right by consenting to the terms of this Agreement.
- (ii) Respondent further agrees that the collection procedures outlined in N.C. Gen. Stat. §143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 13(c) of this Agreement.
- (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of any collection procedure outlined in N.C. Gen. Stat. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.
- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

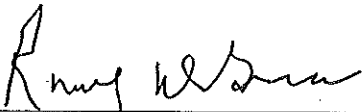
14. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

15. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

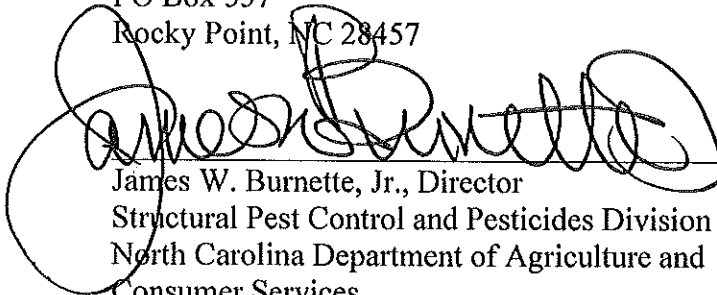
16. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.


BY CONSENT:

  
\_\_\_\_\_  
Mr. Ronald D. Graves  
Woodtreaters, Inc.  
PO Box 557  
Rocky Point, NC 28457

12-4-2018  
Date

  
\_\_\_\_\_  
James W. Burnette, Jr., Director  
Structural Pest Control and Pesticides Division  
North Carolina Department of Agriculture and  
Consumer Services  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

12-18-2018  
Date

  
\_\_\_\_\_  
Christopher R. McLennan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

12/20/2018  
Date

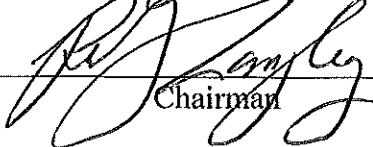
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APPROVED AND ORDERED FILED,

this the 8<sup>th</sup> day of January, 2018.

NORTH CAROLINA PESTICIDE BOARD

BY:

  
Chairman



2017-117

NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES, STRUCTURAL PEST  
CONTROL AND PESTICIDES DIVISION,  
PESTICIDE SECTION,

**Complainant,**

v.

Ronald D. Graves,

**Respondent,**

Supplemental Information

Respondent agreed to conditions of settlement without discussion.

No settlement conference was held.